

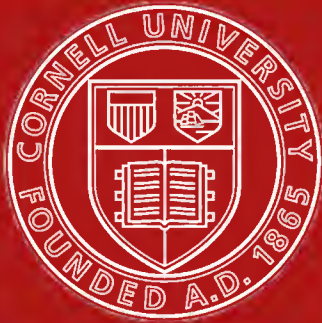
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R E P O R T

T H E C O M M I S S I O N E R S

APPOINTED TO INQUIRE INTO THE

WORKING OF THE LAW

RELATING TO

LETTERS PATENT FOR INVENTIONS.

Presented to both Houses of Parliament by Command of Her Majesty.



L O N D O N :

PRINTED BY GEORGE EDWARD EYRE AND WILLIAM SPOTTISWOODE,
PRINTERS TO THE QUEEN'S MOST EXCELLENT MAJESTY.

FOR HER MAJESTY'S STATIONERY OFFICE.

10

LETTERS PATENT.

Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith.

To Our right trusty and well-beloved Councillor Edward Henry Smith Stanley (commonly called Lord Stanley); Our right trusty and well-beloved Samuel Jones Lord Overstone; Our right trusty and well-beloved Councillor Sir William Erle, Knight, Chief Justice of Our Court of Common Pleas; Our trusty and well-beloved Sir William Page Wood, Knight, a Vice Chancellor; Our trusty and well-beloved Sir William Atherton, Knight, Our Attorney General; Our trusty and well-beloved Sir Hugh McCalmont Cairns, Knight; Our trusty and well-beloved Horatio Waddington, Esquire; Our trusty and well-beloved William Robert Grove, Esquire, one of Our Counsel learned in the Law; Our trusty and well-beloved William Mathewson Hindmarch, Esquire, one of Our Counsel learned in the Law; Our trusty and well-beloved William Edward Forster, Esquire; and Our trusty and well-beloved William Fairbairn, Esquire, greeting :

Whereas an humble Address has been presented unto Us by the Knights, Citizens, and Burgesses, and Commissioners of Shires and Burghs in Parliament assembled, praying that We will be graciously pleased to issue a Commission to inquire into the working of the Law relating to Letters Patent for Inventions :

Now know ye that We, reposing great trust and confidence in your knowledge and ability, have authorized and appointed and do by these Presents authorize and appoint you the said Edward Henry Smith Stanley (commonly called Lord Stanley), Samuel Jones Lord Overstone, Sir William Erle, Sir William Page Wood, Sir William Atherton, Sir Hugh McCalmont Cairns, Horatio Waddington, William Robert Grove, William Mathewson Hindmarch, William Edward Forster, and William Fairbairn to be Our Commissioners to inquire into the working of the Law relating to Letters Patent for Inventions.

And for the better effecting the purpose of this Our Commission, We do by these Presents give and grant to you, or any Five or more of you, full power and authority to call before you such Persons as you shall judge likely to afford you any Information upon the subject of this Our Commission; and also to call for, have access to, and examine all such Books, Documents, Registers, and Records as may afford the fullest Information on the subject, and to inquire of and concerning the premises by all other lawful ways and means whatsoever.

And We do also give and grant unto you, or any Five or more of you, full power and authority when the same shall appear to be requisite to administer an Oath or Oaths to any Person or Persons whatsoever to be examined before you, or any Five or more of you, touching or concerning the premises.

And We do by these Presents will and ordain that this Our Commission shall continue in full force and virtue, and that you Our said Commissioners, or any Five or more of you, may from time to time proceed in the execution thereof, and of every matter

and thing therein contained, although the same be not continued from time to time by adjournment.

And Our further Will and Pleasure is that you do with as little delay as possible report to us under your hands and seals, or under the hands and seals of any Seven or more of you, your several Proceedings under and by virtue of this Our Commission, together with what you shall find touching or concerning the premises.

And We do further ordain that you, or any Seven or more of you, may have liberty to report your Proceedings under this Commission from time to time, should you judge it expedient so to do.

And We do hereby command all and singular Our Justices of the Peace, Sheriffs, Mayors, Bailiffs, Constables, Officers, Ministers, and all other Our loving Subjects whatsoever, as well within Liberties as without, that they be assistant to you and each of you in the execution of these Presents; and for your assistance in the due execution of these Presents We have made choice of Our trusty and well-beloved Edward Lloyd, Esquire, Barrister-at-Law, to be Secretary to this Our Commission, and to attend you, whose Services and Assistance We require you to avail yourselves of from time to time as occasion may require.

In witness whereof We have caused these Our Letters to be made Patent.
Witness Ourselves at Westminster, the First Day of September, in the Twenty-sixth Year of Our Reign.

By Warrant under the Queen's Sign Manual.

C. ROMILLY.

R E P O R T.

TO THE QUEEN'S MOST EXCELLENT MAJESTY.

MAY IT PLEASE YOUR MAJESTY,

WE, the Commissioners appointed to inquire into the working of the Law relating to Patents for Inventions, humbly present to Your Majesty the results of our investigation, in this our Report.

Our attention was, at the outset, directed to the consideration of those defects in the working of the present system which, since the amendment of the law in the year 1852, had become so generally felt, as to have given occasion for the institution of the present inquiry.

Of these, the most important appear to be the protracted litigation and consequent expense, which in almost every case result from the present mode of trying questions of Patent Rights. Two instances were stated to us in evidence, in which the law expenses of plaintiff and defendant together amounted to 26,000*l.* and to 15,000*l.* respectively ; the course of litigation began in the former case in 1857, and may at the present moment be still further protracted, in the latter it lasted from the year 1842 until 1855. It may be added that since the Commission met, a single case has occupied the attention of the Court of one of the Vice-Chancellors for upwards of thirty days.

The multiplicity of Patents, arising from the facility and diminished cost of obtaining them, has been brought to our notice as another serious cause of complaint against the present law. It appears from the tables compiled at the Great Seal Patent Office, that the average number of Provisional Protections annually granted is now about 3000, while the Patents sealed exceed 2000, and that an increase on this average may be expected. The evil arising from this multiplicity of monopolies is alleged to be of a twofold nature. In the first place, that of the existence of a number of Patents for alleged inventions of a trivial character ; in the second place, that of the granting of Patents for inventions which are either old or practically useless, and are employed by the patentees only to embarrass rival manufacturers. Thus in either case that monopoly, one of the main grounds of defence of which is the stimulus it offers to invention, obstructs instead of aiding, the progress and improvement of arts and manufactures.

On the other hand, we have been pressed with the opinion that the cost of obtaining Letters Patent, together with the fees payable on their continuance up to the full term of 14 years, although reduced to 175*l.*, payable by instalments, of which the first does not exceed 25*l.*, is still so high as to be an insuperable bar to the poor inventor in obtaining the protection to which he is fairly entitled.

Again, it is claimed by inventors on the ground of public policy, that the tax imposed on the granting of Patents, and thereby indirectly, on inventors, should be no more than sufficient to cover the expenses of the Great Seal Patent Office, and of the necessary libraries and museums connected with it. At the present date, it appears that the accumulation of surplus fees (after allowing for all such expenses), since the year 1852, amounts to more than 200,000*l.*, and that for future years, the annual surplus upon the present footing may be estimated at 40,000*l.*

With such considerations before us, and knowing that from the nature of the subject the remedies suggested would vary within very wide limits, we determined, as the basis of our inquiry, to draw up a series of questions which should invite suggestions upon those points of the present system where amendment seemed to be required.

The following questions, while they formed to some extent, the groundwork of our oral examinations, have been widely circulated among the Chambers of Commerce in the principal cities and towns of this kingdom, and have been submitted to such other societies and persons as seemed to us to be likely to afford assistance in investigating the subject before us.

1. Should the cost of obtaining Letters Patent be diminished, or increased ; if either, to what extent ; and should the payment be made in one sum, or by annual, or other instalments ?
2. Does the present mode of obtaining Patents appear to you satisfactory ? Is it your opinion that there ought to be a preliminary investigation of a more searching character than that which at present takes place ? If so, how should the tribunal be constituted before which such investigation shall be conducted, and should the judgment of such tribunal be final ?

3. Should the investigation be ex parte or public and subject to opposition? Should the present practice as to caveats be adhered to?
4. Have you reason to suppose that public inconvenience is caused by the multiplicity of Patents?
5. Do you consider that Patents ought to be refused on the ground of the trifling and frivolous nature of the inventions for which they are claimed?
6. Should greater facilities be provided for the repeal of invalid Patents?
7. Do you consider that any change should be made in the tribunal appointed to try actions and suits instituted by Patentees?
8. Should the granting of Licences in your opinion be made compulsory, and can you suggest any practicable method by which this should be done?
9. Do you think it expedient that Patents should be granted to importers of foreign inventions?
10. Do you think it expedient that Patents should be granted to foreigners residing abroad, or to their nominees?
11. Is it expedient to make any, and if so, what alteration in the law relating to prolongations and confirmations?
12. Is it expedient to make any, and if so, what alteration in the law respecting disclaimers and memoranda of alterations?

We have thought it most convenient, in considering the evidence before us, to arrange it under the following heads:—

I. A statement of the successive stages of procedure in applying for the grant of Letters Patent; of the fees payable at each stage, and during the continuance of the term of 14 years; and of the procedure on Disclaimers, Memoranda of Alterations, Confirmations, and Prolongations.

II. Opinions on the question whether it is or not expedient that Patents should be easily and cheaply granted.

III. Objections to the present mode of trying cases of Patent Rights, and alterations which may be suggested.

IV. The various opinions on the working of the system, as regards Disclaimers, Memoranda of Alterations, Confirmations, and Prolongations, and on the propriety of granting Patents to importers of foreign inventions, and to foreign inventors.

The evidence on these latter branches of our inquiry, as well oral as written, may be classified under three general heads:—1st, that of judges and members of the legal profession more especially acquainted with this branch of the law, and of the gentlemen officially engaged in the working of the present system; 2ndly, that of Patent agents; 3rdly, that of engineers and manufacturers, many of whom represent in their own persons the conflicting interests of the inventor and of the user of inventions.

I.

The following Table shows the general results of applications for Patents under the present system, from its commencement, on the 1st October 1852, to the end of the year 1863.

—	1852. (3 Mths.)	1853.	1854.	1855.	1856.	1857.	1858.	1859.	1860.	1861.	1862.	1863.	Totals.
Applications -	1,211	3,045	2,764	2,958	3,106	3,200	3,007	3,000	3,196	3,276	3,490	3,309	35,562
Ditto with Provisional Specifications	1,178	2,994	2,722	2,900	3,064	3,164	2,956	2,953	3,145	3,228	3,437	3,252	34,993
Ditto with Complete Specifications -	33	51	42	58	42	36	51	47	51	48	53	57	569
Ditto for English inventions	1,014	2,439	2,397	2,133	2,565	2,399	2,299	2,455	2,564	2,392	2,545	2,421	27,623
Ditto for foreign inventions	197	606	367	825	541	801	708	545	632	884	945	888	7,939
Provisional protections	1,176	2,972	2,704	2,892	3,052	3,146	2,949	2,940	3,125	3,178	3,388	3,199	34,721
Notices to proceed -	973	2,363	2,050	2,271	2,242	2,294	2,174	2,193	2,318	2,273	2,439	2,361	26,051
Oppositions entered -	69	131	67	49	61	54	48	43	38	30	15	20	625
Hearings of oppositions before Law Officers -	65	119	61	48	56	48	44	43	34	28	10	20	576
Warrants granted -	918	2,190	1,878	2,047	2,097	2,031	1,954	1,979	2,065	2,049	2,192	2,095	23,495
Warrants refused -	9	23	11	8	12	10	7	2	7	9	2	3	103
Oppositions to sealing entered -	4	5	2	8	4	3	1	5	2	2	1	1	38
References to Law Officers by Lord Chancellor	1	1	1	1	1	1	—	—	1	1	—	—	8
Hearings before Lord Chancellor	4	3	2	5	2	3	1	3	1	2	—	1	27
Patents sealed -	914	2,185	1,876	2,044	2,094	2,028	1,954	1,976	2,061	2,047	2,191	2,094	23,463
Specifications filed in pursuance of Letters Patent	865	2,071	1,774	1,938	2,010	1,943	1,878	1,900	1,966	1,969	2,105	2,011	22,430
Patents void for want of Specifications filed -	23	74	66	55	47	52	31	39	47	35	34	28	531
Complete Specifications filed with petition on which Patents have been sealed -	26	40	36	51	37	33	45	37	48	43	49	53	492
Ditto lapsed by reason of non-sealing of Patent -	7	11	6	7	5	3	6	10	3	5	4	4	71
Stamp duties of 50 <i>l.</i> paid before the end of third year -	310	621	513	551	573	584	539	542	579				
Patents lapsed at end of third year -	581	1,490	1,297	1,438	1,474	1,392	1,394	1,395	1,435				
Stamp duties of 100 <i>l.</i> paid before the end of the seventh year	102	205	140	195	214								
Patents lapsed at end of seventh year	208	416	373	356	359								

The first step on the application for Letters Patent is to lodge at the Great Seal Patent Office the Petition, which discloses only the title of the invention; the Provisional Specification, "describing the nature of the invention," and a solemn declaration by the applicant that he believes himself to be the true and first inventor. These documents are referred to one or other of the Law Officers of the Crown, whose duty goes no further than to decide whether or not the nature of the invention is sufficiently described by the Provisional Specification. By Sect. 8 of the Patent Law Amendment Act, 1852, the Law Officer is at liberty to call, in aid of his decision, mechanical or scientific assistance, and to order the payment of such fees as he may think fit to the persons so called in. This power is, however, only occasionally exercised. The Law Officer upon being satisfied of the sufficiency of the Provisional Specification grants his certificate, allowing provisional protection. The granting of the certificate is then advertized in the London Gazette, and in the Journal of the Commissioners of Patents.

This investigation before the Law Officer may, however, be avoided by lodging in the first instance a Complete Specification, "particularly describing the nature of the Invention, and in what manner the same is to be performed;" in this case the certificate issues as of course.

Within four months from the date of his application, notice must be given by the applicant of his intention to proceed with his Patent; advertisements of this intention, stating nothing more than the title of the Patent, are then officially issued, and a period of 21 days is allowed, within which objections to the grant may be lodged at the Great Seal Patent Office. The case between the applicant and the objector is then heard by the Law Officer, the parties usually appearing separately, the Provisional Specification being in practice regarded as a secret document. When, however, from the mode of conducting the opposition, the Law Officer finds that the nature of the new invention has become known to the opponent, he sometimes uses his discretionary power of hearing the parties in the presence of one another.

Cases have sometimes occurred in which the Law Officer has refused his fiat, on the general ground of want of novelty. This, however, has only been where it was brought to his knowledge that the invention claimed was clearly not new. For from the fact that no appeal lies from his refusal of the fiat, the inclination has always been to grant the application where a fair doubt exists.

The applicant, if successful upon this hearing, obtains from the Law Officer his fiat for the warrant; but the objector has still a right (by entering a caveat at the Great Seal Patent Office) to appeal to the Lord Chancellor against the issue of the fiat.

The next stage is the application for sealing the Letters Patent, which must be made within three months from the date of the warrant. Here there is again an opportunity of opposing the grant. Notice of objection must be lodged as at the former stage, and the parties are then heard before the Lord Chancellor, who has the power (occasionally, though not often exercised) of referring the matter to the Law Officer for his opinion. The decision of the Lord Chancellor is, in any case, final; the Patent, if successful, being sealed and dated as of the date of application.

The following is a table of the fees payable up to the grant of Letters Patent:—

On lodging Petition	-	-	-	-	£5
For Certificate of Notice to proceed	-	-	-	-	5
On Warrant	-	-	-	-	5
On Sealing	-	-	-	-	5
On Specification	-	-	-	-	5
Total					25

In accordance with the rule that the provisional protection lasts for six months only from the date of application, or for such further time as the Lord Chancellor may, upon petition of the applicant, in his discretion, allow, the Complete Specification must be filed within that period, or within such further time as may have been allowed. If this be not done, the protection ceases and the grant, if made, becomes void.

In order to maintain the validity of the grant, the Patentee must, before the end of three years from the date, pay an additional sum of 50%; and before the end of seven years, the further sum of 100%, thus making the whole cost in fees, 175%. About two-thirds of the Patents granted become void at the expiration of the third year, for non-payment of the fee of 50%, and less than one-tenth are continued beyond the seventh year.

The mode of obtaining the repeal of Letters Patent is by writ of *scire facias*. Since the alteration of the practice in 1852, by which the Patentee was allowed the right of

Number of Patents repealed by <i>scire facias</i> from 1617 to October 1852	-	-	19
Number of Patents repealed by <i>scire facias</i> from October 1852 to December 1861	-	-	None.

NUMBER of DISCLAIMERS and MEMORANDA of ALTERATIONS filed during the last Twelve Years.

In cases where, subsequently to the taking out of a Patent, it is discovered by the Patentee that some part of the invention for which such Patent is claimed, already exists in a printed form, but having long escaped public notice, has become obsolete, and where a re-discovery by the Patentee has taken place, application may be made to the Judicial Committee for confirmation of the Patent, notwithstanding want of novelty in the invention for which it is claimed.

Three general rules may be laid down, by which the Judicial Committee have been guided in recommending prolongations. The Patentee must show, first, that the invention is of great ingenuity and merit; secondly, that it is of considerable public utility; thirdly, that, in spite of his reasonable exertions to promote the invention, the remuneration he has received from it is inadequate.

For Prolongation.

For Confirmation.

Granted	-	-	-	-	1
To Patentee	-	-	-	-	1
Dismissed	-	-	-	-	6
Application of Patentees	-	-	-	-	5
„ „ Assignees	-	-	-	-	1
					7
Total	-	-	-	-	144
Lodged and pending in 1863, 8 cases.					

II.

On the question whether Patents should be made easy or difficult to obtain we find a division of opinion; some witnesses denying, others affirming the existence of public inconvenience from an indefinite multiplication of these temporary monopolies.

In the opinion of the former class, such inconvenience either does not exist at all, or, if it is in any slight degree felt, is so exceptional as to require no special legislation. They maintain that, as a rule, Patents which are either frivolous in their character, or questionable on the ground of want of novelty, are not supported by the Patentee when exposed to the test of payment for renewal, or of the expense of litigation. They contend that without the protection given by a Patent, many inventions useful in character though not of primary importance would either not be made, or being made would remain undivulged; that to decide beforehand with certainty, on the value or worthlessness of an invention is seldom possible; and that the evil remedies itself, inasmuch as worthless Patents are seldom continued beyond the period of three years.

The majority of witnesses, however, decidedly affirm the existence of practical inconvenience from the multiplicity of Patents. It is clear that Patents are granted for matters which can hardly be considered as coming within the definition in the Statute of Monopolies, of "a new manufacture." It is in evidence that the existence of these monopolies embarrasses the trade of a considerable class of persons, artisans, small tradesmen, and others, who cannot afford to face the expense of litigation, however weak the case against them may seem to be; and a still stronger case is made out as to the existence of what may be called obstructive Patents, and as to the inconvenience caused thereby to manufacturers directly, and through them to the public.

From a paper drawn up at our request by the Superintendent of Specifications, it appears that upon examining into the first 100 applications for Patents in each of the years 1855, 1858, 1862, the results were, in his opinion, that in 1855, 26 were manifestly bad for want of novelty, and 6 more partly so; in 1858, 14 manifestly old, and 1 partly so; in 1862, 7 were old, and 1 would probably turn out to be so. An instance, illustrating the mode in which these Patents are used, is given in evidence, where royalties had been demanded, and in most cases obtained, by the Patentee of a machine, which turned out upon investigation to be identical with one which 19 years before had been well known and publicly used.

Other instances will be found in the evidence of particular manufactures and branches of invention which are so blocked up by Patents, that not only are inventors deterred from taking them up with a view to improvement, but the manufacturer in carrying on his regular course of trade, is hampered by owners of worthless Patents, whom it is generally more convenient to buy off than to resist. The evil also results in another practice having the same obstructive tendency, namely, that of combination amongst a number of persons of the same trade to buy up all the Patents relating to it, and to pay the expense of attacking subsequent improvers out of a common fund. From a comparison of evidence, it cannot be doubted that this practice prevails to a considerable extent. We must also conclude that when the obstruction is not to be got rid of without the expense and annoyance of litigation, in a large majority of cases the manufacturer submits to an exaction, rather than incur the alternative.

We desire to call special attention to the evidence given by the First Lord of the Admiralty, and by various witnesses on behalf of the War Department, showing the embarrassment which has been caused to the naval and military services by the multitude of Patents taken out for inventions in use in those departments. It appears to us necessary for the public service that for the future no Patent should be granted without the insertion of a proviso allowing to the Crown the unrestricted use of the invention therein patented, the compensation for such use to be fixed by the Treasury.

Having in view the several opinions thus shortly adverted to, we have to consider the evidence:—

1st. As to the cost of obtaining and renewing Letters Patent, and as to the mode of payment.

Notwithstanding the prevalence of an opinion that Patents may be and are unduly multiplied, a very small minority is in favour of increasing the cost of obtaining them: of those who have given evidence in this sense, some object altogether to the granting of Patent rights, and therefore consistently desire that if not abolished they should be reduced in number by any practicable method; others contend that the mere fact of having a larger payment to make, would render projectors more careful not to incur

expense on behalf of inventions of doubtful utility and novelty. Many witnesses think that the scale of payment was, on the revision of the law in 1852, fixed too low, but do not consider that it could now be prudently raised.

Objection is taken by a third class of witnesses, to the payments of 50*l.* and 100*l.* on the renewal of the Patent at the end of the third and seventh years respectively. It is alleged that the periods of payment are fixed too early in the duration of the monopoly; that many valuable Patents have, even in their seventh year, failed to become profitable from the difficulty of inducing manufacturers to adopt new methods of working, and that in such cases the Patentee is either unable to procure the necessary sum or is unwilling to risk the additional expense, and therefore allows his Patent to drop; that thus the system inflicts a hardship on the inventor, and retards the general progress of improvement. Several modifications of the law are proposed, one alternative being to reduce these payments, another to postpone them till the end of the 5th and 9th years respectively. It is also suggested that some inconvenience arises from the fact that on nonpayment of the renewal fees the Patent becomes at once void, and that much of the hardship complained of would be obviated, if the Lord Chancellor were empowered to allow the continuance of the Patent, on payment being made, though after the proper time, provided the Patentee were able to prove that the delay had arisen from accident or from a mistake not involving gross negligence.

Among the engineering and manufacturing class there seems to be some inclination to urge the adoption of a system of annual payments, on the ground that the burden would thus be more equally distributed over the whole period of the Patent, and that the rich and the poor inventor would thereby be brought upon more equal terms, while there would be a constant tendency on the part of Patentees to allow an unremunerative Patent to drop at once.

The propriety of a system of annual payments is however denied by the greater number of those who have given evidence before us, who rely on their experience of the difficulty that is now constantly found in getting Patentees to ensure the renewal of their Patents by the necessary formalities; they maintain that this difficulty would be the source of still greater evil if the same process had to be gone through from year to year.

Whatever be the scale of payment adopted, we find a very general expression of opinion that the price to be paid by inventors, in the aggregate, should not be more than sufficient to provide for the expenses of the Patent Office, Library, and Museum; and that these should be maintained in the highest state of efficiency, so as to give inventors the utmost facility for ascertaining the status of every branch of invention.

2nd. As to the introduction of a system of preliminary examination, its character, and by whom it should be conducted.

It is urged in opposition to any further course of preliminary examination than that which is at present pursued, first, that the principle of our law requires the inventor himself to make such an examination, inasmuch as he takes out a Patent at his own risk; and next, that it could not be conducted in a manner free from objection. That if it were *ex parte*, the interests of the public would be no better protected than they now are; if subject to opposition, the inventor would be deprived of the protection of secrecy, while he would in fact be subjected to a premature trial of his Patent; and that such a trial, even if it resulted in his success, would be no protection to him against future litigation.

That if the result of such an examination was to be final, the examining body would seldom undertake the responsibility of refusing a Patent; if subject to appeal they would, on the hearing of that appeal, be placed in the position of defendants. That on the whole the result would be, increased expense and delay to the Patentee, with no greater security either to him or to the public. These opinions, though proceeding from a limited number of witnesses deserve consideration from the knowledge and experience of those by whom they are entertained.

On the other hand there is a very strong expression of opinion, and one not confined to any particular class of persons, in favour of some more strict preliminary examination. It is suggested by a few of these, but only by a few, that such an examination ought to embrace an inquiry not only into the novelty but into the utility of the Invention. It is admitted that the inquiry as to novelty must be limited to matter which is to be found in a printed form, and should not extend to oral testimony as to priority of user.

It is proposed that such an examination be conducted by the members of a mixed board of examiners, consisting of one or more barristers, and a proportionate number of practical and scientific men; and that this board should, unless forming part of or acting in concert with some special tribunal to be appointed for the trial of Patent cases, be

assistant and subordinate to the Law Officers of the Crown, whose official duties in respect of Patents should otherwise remain unaltered. That the result of this examination should be either a decision subject to one final appeal; or a certificate which, whether favourable or unfavourable, should be appended to the Specification.

The general opinion seems to be that the interest of the public would be sufficiently protected at the hands of the examiners, and that at any rate, the result would be to exclude many applications which, now of necessity, pass without comment.

With respect to caveats, it is held by a majority of witnesses that the present system should remain unaltered, subject to such modifications in practice as might be required by the institution of preliminary investigation.

3. As to the propriety of making licences compulsory, or of requiring user within a given period.

As against these propositions it is contended by some witnesses that Patentees are, as a rule, willing to grant licences to work their inventions on reasonable terms. To do so is obviously their interest; and it may be assumed that what is men's interest to do will generally be done. Exceptions may occur, but these, it is asserted, will be insufficient in number and importance to justify a peculiarly sweeping interference with rights to which the law has assigned the character of property.

Apart from the above considerations, the practical difficulties appear to be regarded as all but insuperable. No rule can be laid down for estimating the value of a Patent, or the amount of charge which may be reasonably imposed on those using it. These will vary in every instance: and it is manifestly futile to require the inventor to grant a licence when applied to, unless some provision be made for determining the price to be paid. In the absence of such provision, a prohibitory price would render the law inoperative. But on this question of price individual opinions must be expected to vary widely; and it is impossible to suppose that any system of arbitration would prove satisfactory, where neither precedent, nor custom, nor fixed rule of any kind could be appealed to on either side.

4. As to the repeal of invalid Patents.

It appears to be generally felt, more especially by those who are immediately concerned in managing the litigation of Patent rights, that some proceeding, more simple in form, and therefore more expeditious, should be adopted for the repeal of invalid Patents. That this might either be by petition to Your Majesty in Council, or by motion in a Court of Equity. The most serious objection to the present mode of proceeding seems to be, that while a Patentee, if he maintains his Patent, will only get such costs as may be covered by the bond which is required from the petitioner against him, the petitioner, on the other hand, if he succeeds in his object of upsetting the Patent, will get no costs.

As regards the issues to be tried, it has not been shown to us that any alteration in the form of the proceeding for repeal would materially shorten them, or diminish the expenses of the trial.

III.

The evidence before us shows an almost universal feeling of dissatisfaction with the present mode of trying questions of Patent right, while there are many and various proposals for the constitution of a tribunal which should be more expeditious and less expensive. The principal fault of the system lies in this: that the jury by whom the case is tried, seldom possess even so much scientific knowledge as is necessary to enable them to understand the evidence. Advantage is constantly taken of this deficiency; first, in a subtle and vague drawing of Specifications; again, by an artful generality in the form of framing the issues to be tried; lastly, on the trial, by the introduction of a cloud of scientific evidence, to perplex rather than to explain, the true points at issue. It is possible that these difficulties might to some extent be obviated, as has been suggested to us, by requiring a greater strictness in drawing the Specification and claim of the Patentee, or by a more perfect scheme for settling, in the presence of the Judge, the issues to be tried; but it is almost without exception admitted that a radical remedy is only to be found in reforming the constitution of the tribunal itself.

The main point in doubt is, whether this reform should go to the extent of constituting a special Court for the trial of Patent cases, or whether the existing jurisdictions of the Courts of Law and Equity should be maintained in a modified form. The objections to a special Court are various and strong. In the first place, the want of sufficient business to occupy its time fully. Secondly, that on trials of Patent cases, questions are frequently arising which require an extended knowledge of other branches of the law; and that a Judge selected for his special acquaintance with mechanical and

scientific topics, and one who in his judicial capacity was principally engaged in the consideration of such questions, would not be so competent to deal with the whole subject-matter of the case as one by whom all branches of our law were in turn handled. Thirdly, that such a constitution of the Court would render it extremely difficult, if not impossible, to secure an effectual appeal. We do not find that these views (with the exception, perhaps, of the first) have been met by arguments of equal weight. Assuming, therefore, that it would not be advantageous to constitute a special Patent Court, we have to consider what has been proposed in aid of the existing jurisdictions.

The general proposal is that the Judge, on trial of a Patent case, should either be aided by scientific assessors, or that the case should be tried by a jury composed of from five to seven scientific persons. The latter plan does not appear to us to be wholly satisfactory, owing to the difficulty there would always be in getting a sufficient number of scientific men to compose a jury, sufficiently competent and unbiassed.

The conclusion which we have drawn from the evidence is, that a Court might be satisfactorily formed on the former plan, taking as a general model of its constitution Your Majesty's High Court of Admiralty, assisted by the Trinity Brethren. It is difficult accurately to estimate the weight of evidence as to whether those assessors should act judicially, or merely by way of instruction and advice to the Judge; but the balance seems rather to incline to the latter view, which would place them in a very similar position with the assessors to the High Court of Admiralty. There is again a great variety of opinion as to the mode in which the assessors should be chosen. It is said, on the one hand, that they might be selected by the Judge, or by the parties, with a reference, in case of dispute, to the Judge, from scientific men generally; with respect to this latter proposal, the only doubt is, whether considering the high value which is put upon scientific evidence, men of sufficient eminence would be induced by any such fee as the Court would pay to give up either their usual avocations or the chance of being employed by one or other of the parties to the suit. On the other hand, if such assessors are to be a permanent and independent body, there will be a like difficulty in providing for payment of sufficient salaries to secure the services of scientific men numerous enough to give the opportunity of selection for the various classes of cases, and eminent enough in their professions to be willingly accepted by the parties.

It seems to be generally thought that the assistance of an ordinary jury in Patent cases is not requisite; there is, however, a certain amount of unwillingness to give up that which is considered by many the safest form of tribunal for the weighing of facts and probabilities; it has, therefore, been suggested that the employment of a jury might be at the joint request of the parties or at the discretion of the Judge.

We have been informed that no difficulty would be found in setting apart a Court for the trial of Patent cases, and in providing for the attendance in rotation of one of the Judges of the Courts of Law and Equity.

IV.

1. As to granting Letters Patent to importers of foreign inventions, and to foreigners.

It has long been the practice, founded on judicial decision, to consider that the use or publication of an invention abroad did not deprive that invention of the character of "a new manufacture within this realm." It appears to us, and is generally admitted in the evidence that the present facilities of communication subsisting between all parts of the world have done away with the only valid reason for such a construction of the words of the Statute of Monopolies. The object of allowing such Patents might fairly be, in an age of slow international communication, to encourage enterprising persons to go in search of and to introduce to this country useful processes employed abroad but not otherwise likely to be adopted here, for the want of which we should long have been behind other nations. It does not, however, seem worth while to continue the same facilities now, when foreign inventions are most frequently patented in this country and in their native land simultaneously; especially, as we are well informed, that one result of the practice is to encourage unscrupulous persons to steal the inventions of foreigners and to run a race with the legitimate owner to get them patented here.

The general opinion seems to be in favour of granting Patents to foreigners or to their agents or nominees in this country. By some persons it is proposed to limit the grant to nations of those countries whose Governments allow the reciprocal privilege to Your Majesty's subjects. And further, to impose as a condition that the invention be worked or licences granted for working it in this country, following the system which prevails generally on the continent.

2. As to Confirmations.

With a single exception, and that merely as a statement of opinion, unsupported by argument, we find no suggestions made to us with a view to the alteration of the present system on this point. We find that only seven applications have been made for Confirmation of a Patent under 5 & 6 Wm. IV., c. 83. s. 2., and only one of such applications has been acceded to. We see no reason for retaining a power of which no practical use is made.

3. As to Prolongations.

We do not find that the witnesses, with one exception, complain of the existence of Prolongations, this may, however, be accounted for by their extreme rarity.

A careful consideration of the evidence given by the Clerk to Your Majesty's Privy Council leads us to the opinion that Prolongations should not be in future granted.

The power of granting them is in its nature arbitrary, and it does not seem just that the public should be excluded for a term of years from the use of an invention, which in the ordinary course of law would otherwise become public, simply because the inventor has reaped from it a smaller profit (possibly through his own want of business habits) than he thought himself entitled to expect. The uncertainty moreover whether an application for Prolongation will or will not be granted is an evil to all parties concerned.

4. As to Disclaimers and Memoranda of Alterations.

It has been stated to us that the former of these proceedings sometimes results in the enlargement of the Patentee's rights, and that more strictness ought therefore to be exercised in allowing them.

With respect to Memoranda of Alterations, we do not find that any serious objection is taken to a continuance of the present system. It is indeed suggested that, following the French Law, Patents of Addition should be allowed. No reasons, however, are given us in support of this view.

We have thus stated to Your Majesty the general result of the evidence before us, and the conclusions to which we have come after considering it.

We now humbly submit to Your Majesty the following recommendations, which are founded on these conclusions:—

RECOMMENDATIONS.

1. Your Commissioners do not find that the present cost of obtaining Letters Patent is excessive, or the method of payment inconvenient; they do not therefore recommend any alteration of the present system on those points; but they think that Patent fees should not be made to contribute to the general expenditure of the State until every reasonable requirement of the Patent Office has been satisfied.

2. They are unable to recommend a preliminary investigation into the merits of the invention for which a Patent is claimed; but they advise that a careful inquiry be instituted under the direction of the Law Officers of the Crown as to whether there has been any previous documentary publication of the invention, either by grant of Letters Patent, or otherwise; and if such publication have taken place, that the Patent shall be refused.

No evidence other than such documentary evidence should be admissible, and the reasons for the refusal to grant the Patent should be certified by the Law Officers; an appeal from their decision should lie to the Lord Chancellor.

3. Your Commissioners are of opinion that the present mode of trying the validity of Patents, is not conducted in a satisfactory manner. That such trials ought to take place before a Judge sitting with the aid of scientific assessors, but without a jury, unless at the desire of both parties to the suit or action. That such assessors ought to be selected by the Judge in each case, and the remuneration to be paid them be included in the costs of the suit or action, and provided for in such manner as the Judge shall direct.

That no special Judge be appointed for the trial of Patent cases, but that the Judges of Law and Equity be empowered to make rules by which one Court should sit for trial of Patent cases exclusively. That on such trial the Judge, if sitting without a jury, decide questions of fact as well as of law.

4. That the granting of licences to use patented inventions ought not to be made compulsory.

5. That Patents ought not to be granted to importers of foreign inventions.

6. That in no case ought the term for which a Patent is granted to be extended beyond the original period of 14 years.

7. That in all Patents hereafter to be granted a proviso shall be inserted to the effect that the Crown shall have the power to use any invention therein patented without previous licence or consent of the Patentee, subject to payment of a sum to be fixed by the Treasury.

8. While, in the judgment of the Commissioners, the changes above suggested will do something to mitigate the inconveniences now generally complained of by the public as incident to the working of the Patent Law, it is their opinion that these inconveniences cannot be wholly removed. They are in their belief inherent in the nature of a Patent Law, and must be considered as the price which the public consents to pay for the existence of such a law.

(Signed)	STANLEY.	(L.S.)
	OVERSTONE.	(L.S.)
	W. ERLE.	(L.S.)
	W. P. WOOD.	(L.S.)
	H. M. CAIRNS.	(L.S.)
	H. WADDINGTON.	(L.S.)
	W. R. GROVE.	(L.S.)
	W. E. FORSTER.	(L.S.)
	WM. FAIRBAIRN.	(L.S.)

EDWARD LLOYD,
29th July 1864.

REPORT OF MR. HINDMARCH.

MAY IT PLEASE YOUR MAJESTY,

As one of the Commissioners appointed to inquire into the working of the law relating to Letters Patent for inventions I humbly crave leave to report to Your Majesty what I deem to be the results of the inquiry into that subject directed by Your Majesty.

I concur in some but not in all of the recommendations contained in the Report made to Your Majesty by the other Commissioners, and it appears to me that the law relating to Patents requires amendment in several other particulars not mentioned in that Report.

I concur in the first recommendation in the Report with respect to the cost of obtaining Letters Patent; but I think that the mode of granting Patents for inventions requires amendment.

It appears to me that the law is at present defective in making no provision for an appeal against the decision of a law officer adverse to an applicant for Letters Patent, and I beg leave to recommend that when the decision of a law officer is adverse to a petitioner he should have the same right of appeal as a person who fails in an opposition, so that the parties may be placed upon an equal footing.

Specifications of inventions are frequently prepared in such a manner as to occasion great difficulty in construing them and in ascertaining the nature and extent of the claims of invention which they are intended to make. And from this cause the cost of litigating Patent rights is often greatly enhanced.

There is too much reason for believing that Specifications are frequently thus prepared with a fraudulent object. A Specification ought to define the invention intended to be comprised in a Patent so as to enable any person of ordinary skill and intelligence upon reading it to ascertain without difficulty the nature and extent of the right conferred by the Patent. If an alleged invention cannot be so described, it is one which (if it deserves to be called an invention) ought not to be made the subject of a Patent.

I recommend that no Patent should be granted for an invention until a Specification of it containing a clear and distinct statement of the claim or claims made by the inventor has been filed in the Patent Office, and that the sufficiency of all claims in Specifications should be ascertained and certified by competent persons appointed to perform that duty.

It appears to me that any official inquiry into the novelty of an invention sought to be made the subject of a Patent must necessarily be incomplete and unsatisfactory. To institute such an inquiry even in an imperfect manner would occasion a considerable amount of expense to the public, and I think it better to adhere to the present practice under which the responsibility of inquiring into the novelty of an invention sought to be patented is thrown upon the applicant who alleges his invention to be new.

According to the present law, an application for a Patent is refused if a party opposing the grant makes it clear that the invention was not new at the date of the application, or that the applicant was not then the first and true inventor, but in doubtful cases the practice is to grant the Patents, there being at present no means of trying the rights of the parties in a satisfactory manner. I submit that it would be an improvement if, when there is a disputed state of facts with respect to the right of a petitioner to an invention which he claims, the Lord Chancellor were to be authorized to direct the question in issue to be tried between the parties before the grant of any Patent for the invention.

The form of a Patent might be advantageously shortened, and in order to effect that object many of the provisions usually contained in Patents for inventions might be made applicable to them by express enactment, and I recommend that every Patent should be printed and issued, together with a printed copy of the Specification of the invention to which it relates.

I concur in the statement in the third recommendation contained in the Report of the other Commissioners, that the present mode of trying questions of fact respecting the validity of Patents is not satisfactory, and I think that the same observation is applicable to the manner in which questions respecting infringements of Patents are tried.

The evidence given before the Commissioners induces me to recommend that such questions should be tried by a judge or judges, aided (when deemed necessary) by scientific assessors, but without a jury unless required by both parties to the suit.

And I concur with the other Commissioners, that it is desirable that all the judges of the existing courts of law and equity should be made judges of one and the same court, which I think should be a court both of law and of equity, for the determination

of all matters in dispute relating to Patents, with all the powers of the existing courts respecting such matters, and I recommend that the jurisdiction of the court should extend to the whole of the kingdom.

But without some addition to the number of the judges it will be found impracticable to obtain the speedy and satisfactory determination of disputes respecting Patent rights now desired by the public.

The surplus revenue derived from Patents is much more than sufficient to pay the expense consequent upon the institution of such a court as above mentioned, with any additional judge or judges which the business of the court may require, and if any additional judge of that court shall be appointed, the objection to having a judge who confines his attention to a limited class of subjects might be obviated by calling upon him to perform other duties similar to those performed by the other common law and equity judges.

Patent rights are of limited duration, and suits respecting them in the ordinary tribunals of the country have frequently continued until the expiration of the terms for which they were granted. To prevent this evil, I beg leave to recommend that in Patent suits there should be an appeal from the decisions of the judges trying the causes to some of the other judges of the court, and from their decisions to the House of Lords, but no other appeal.

I concur in the fourth recommendation of the Report of the other Commissioners, respecting the granting of licences, and also in the fifth recommendation, that Patents ought not to be granted to the importers of foreign inventions.

But I am unable to concur in the sixth recommendation in the Report, that in no case ought the term for which a Patent has been granted to be extended beyond the original period of 14 years.

It is well known to be the policy of the law to encourage the invention of novelties and improvements in the production of useful manufactures by grants of temporary exclusive privileges to the inventors, by whom the knowledge of them shall be first given to the public. The term of 14 years by the Statute of Monopolies prescribed for the duration of the grants of such privileges appears to be amply sufficient in the greater number of cases in which inventors are to be rewarded by grants of Patent rights. But it cannot with fairness be alleged that the grant of such a term must therefore, in every case, be deemed to be a sufficient reward to an inventor however valuable his invention may be to the public, whatever may have been the labour and the ingenuity of the inventor in producing and perfecting the invention for the benefit of the public; and although he may not only have made no profit, but sustained great loss, by his endeavours to bring his invention into public use. It appears to me that it is highly expedient that prolongations should continue to be granted in every case in which the public shall be shown to have derived great advantage from a Patentee's invention, and in which the inventor shall have failed without any fault of his own during his original term to obtain a sufficient reward for his ingenuity, labour, and pecuniary expenditure. And it appears to be the more expedient to grant extensions of Patents in such cases in order to encourage inventors to apply the peculiar skill and knowledge which they possess to effect the greatest attainable improvement in the practice of their inventions for the benefit of the public.

According to the present practice, however, the interests of the public are not sufficiently protected upon the hearing of applications for prolongations, more especially in unopposed cases, and I recommend a careful inquiry by competent persons to be instituted in every case into the claims of the petitioner for the extension sought to be obtained, the result of that inquiry to be reported to the Privy Council at the hearing of the application.

I concur with the other Commissioners in opinion that the Crown should have the power of using any patented invention which may be deemed useful in the service of the country, and that when any such invention shall have been so used the Patentee should be rewarded out of the public treasury according to the benefit which his invention shall have conferred upon the public service.

It is difficult to say what would be the best mode of determining the amount of the reward to be given to a Patentee in such a case; but I recommend that in every case in which the amount cannot be fixed by agreement between the officers of the Crown and the Patentee, it should be determined by the tribunal (not being a jury) which by law may be authorized to determine the amount of a Patentee's claim for damages in an action for the infringement of a Patent.

The law officers of the Crown, according to the present state of the law, have the sole power of disposing of applications for leave to enter Disclaimers and Memorandums of Alteration relating to titles of patented inventions and Specifications.

That mode of disposing of such applications is sufficient in many cases, but cases occasionally occur in which important facts come into dispute which the law officers have not the means of satisfactorily determining, I therefore recommend that in every such case there should be a right of appeal given to an applicant or a party opposing the appeal, such appeal to be heard by the Lord Chancellor or a judge to whom he shall think fit to refer it.

The present mode of revoking and cancelling Patents for inventions is by an action of *scire facias*, in which a person complaining of the illegality of a Patent is authorized by the fiat of the Attorney-General to proceed in the name of the Crown to obtain the judgment of the Court of Chancery for the revocation and cancelling of the Patent. This use of the name of the Crown appears to be highly objectionable, and the whole proceeding is cumbrous, dilatory, and expensive. I recommend that in lieu of the proceeding by *scire facias*, any person complaining of the illegality of a Patent, should be enabled to apply by petition in a summary way to the Lord Chancellor to have the Patent revoked and cancelled, and that upon every such petition, the Lord Chancellor, or any court or judge appointed by him to hear the matters of the petition, should have the same powers as the Court of Chancery has in an action of *scire facias*.

If a court such as above suggested shall be instituted, the hearing of such petitions might conveniently take place in that court.

Applications for Patents and for leave to enter Disclaimers and Memorandums of Alteration, as well as oppositions to such applications are generally conducted by persons called Patent agents. Some Patent agents are persons of skill and probity, but as every person who can obtain employment is at liberty to act as a Patent agent, the consequence has been that grossly incompetent and fraudulent persons have acted as Patent agents, to the great loss and injury of unwary inventors induced to employ them.

Patent agents are not at present subject to the control of any court or other authority, and there are, therefore, no adequate means of punishing them for malversation or gross incompetence.

The right of persons to act as Patent agents without being admitted solicitors or officers of the Court of Chancery, has been too long established to be taken away, at all events, so far as respects persons at present in practice.

I beg leave to recommend that the names of all the present Patent agents should be registered in the Office of the Commissioners of Patents, and that no person should hereafter be permitted to practise as a Patent agent until examined by some competent authority, in order to ascertain his competency; that all persons so registered as Patent agents, should annually obtain certificates of their right to practise, and should be made liable to be punished for misconduct by the Lord Chancellor or the Master of the Rolls.

There are now several Acts of Parliament in existence relating wholly or in part to Patents for inventions. In any alteration of the Patent Law which may be made by Parliament, I beg leave to recommend that all the existing enactments relating to the subject passed since the Statute of Monopolies, should be repealed, and the whole of the law (with the exception of that Statute), consolidated in one Act.

All which I submit to Your Majesty with great humility, and with great deference to the opinions of the other Commissioners expressed in their Report, which are not in accord with those I thus humbly submit to Your Majesty.

W. M. HINDMARCH.

29th September 1864.

REPORT OF MR. FAIRBAIRN.

MAY IT PLEASE YOUR MAJESTY,

I HAVE signed the Report as settled by a majority of the Commissioners, with the exception of the sixth recommendation (in which I was unable to concur), "that in no case ought the time for which a Patent has been granted to be extended beyond 14 years." On this question I agree with the views expressed by Mr. Hindmarch in his Report, that in cases where the public have derived advantages from a Patentee's invention, and where the Patentee has not been remunerated, it is then desirable and highly expedient that prolongations should be granted. In these views I heartily concur, and also in several useful suggestions contained in that Report.

WM. FAIRBAIRN.

15th November 1864.

MINUTES OF EVIDENCE.

LIST OF WITNESSES EXAMINED.

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1862.					
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W. CARPMAEL, Esq.	-			6	
<i>Tuesday, December 16.</i>					
W. CARPMAEL, Esq.	-	-		16	
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L. EDMUNDS, Esq.	-			25	
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W. SPENCE, Esq.	-	-	-	33	
<i>Tuesday, February 3.</i>					
J. SCOTT RUSSELL, Esq.	-	-		41	
<i>Wednesday, February 4.</i>					
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<i>Tuesday, February 10.</i>					
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<i>Tuesday, February 17.</i>					
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M. CURTIS, Esq.	-	-	-		83
<i>Thursday February 26.</i>					
Sir F. CROSSLEY	-	-	-		90
T. WEBSTER, Esq.	-	-	-		96
<i>Wednesday, May 13.</i>					
H. REEVE, Esq.	-				101
<i>Monday, May 18.</i>					
A. V. NEWTON, Esq.	-	-	-		108
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of the Navy	-	-	-		127
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<i>Friday, June 24.</i>					
W. CARPMAEL, Esq.	-	-	-		137
C. M. CLODE, Esq.	-	-	-		140
F. A. ABEL, Esq.	-	-	-		144

ANALYSIS OF ORAL and WRITTEN EVIDENCE, as relating to the QUESTIONS drawn up and circulated by the COMMISSION.

1. Should the cost of obtaining Letters Patent be diminished, or increased? if either, to what extent; and should the payment be made in one sum, or by annual or other instalments?

		Oral Evidence.	Question.			
{	Mr. H. Reeve.	Would make no change - -	527 (p. 28)-534.	Patent Law Re-	Patent Office. Suggests an annual payment of 5 <i>l.</i> or 10 <i>l.</i> , or of 50 <i>l.</i> after five years.	212.
	Mr. L. Edmunds			form Association.	Cost as before in two payments, during the first five years.	
	Mr. B. Woodcroft.					
	Mr. W. Carpmael					
{		Cost of obtaining Patent is small rather than large. Retain the first payment. Reduce the second and third payments to 25 <i>l.</i> each. Objects to annual payments.	326-342.	Halifax :-		
	Mr. W. Spence -	Second payment of 50 <i>l.</i> after five years. Third payment of 100 <i>l.</i> after nine years.	584-599.	Mr. E. Ackroyd -	Costs should be adjusted to cover the expenses of the Patent Office. Approves o annual payment.	188.
	Mr. A. V. Newton	Approves the present system. Would make no change in cost if a change of law be contemplated. Suggests a remedy in cases of mistake, for continuing a Patent upon cause shown why second and third payments were not made in time.	1826-1833.	Messrs. Crossley -	Suggest no alteration.	-
				Mr. W. Tasker -	Costs should be adjusted to cover expenses of the Patent Office. Suggests payment of 10 <i>l.</i> on the grant and 5 <i>l.</i> annually.	189.
{	Mr. W. R. Grove-	Would not now alter the cost ; but, if anything, increase the first payment.	963-969.	Liverpool :-		
	Mr. M. E. Smith.	Any alteration should be by reducing the first payment, if other checks were resorted to.	1667-1669.	Messrs. McFie -	Would increase, if anything, the cost, and make the payment by instalments.	-
	Mr. T Webster -			Mr. J. Spence	Present cost is far too low -	192.
				Mr. J. Farrie	Present cost should not be diminished unless further restrictions be imposed.	-
{	Mr. J. S. Russell.	Would make no alteration -	832-836.	Mr. John Potter -	The 100 <i>l.</i> stamp abolished -	186.
	Mr. J. Platt	Cost should be much reduced, and payment made in one sum.	1324-1329, 1356-1358.	Inventors' Institute -	Cost too high ; should be reduced to 25 <i>l.</i> , payable by five instalments of 50 <i>s.</i> each, in lieu of 5 <i>l.</i> as at present, up to the completion of Patent, and 12 <i>l.</i> 10 <i>s.</i> after end of the fifth year.	193.
	Sir W. Armstrong.	Would reduce the first payment to 15 <i>l.</i> , and continue the present mode of payment.	1436-1440.	Mr. E. A. Cowper -	Would have Patents granted for 21 years ; and that 100 <i>l.</i> be paid on the 14th year as well as the present fees on the third and seventh years. Revised Specification should be lodged at the seventh and 14th year.	209.
	Mr. R. Roberts -					
{	Mr. M. Curtis -	Would make no alteration -	1545-1548.			
	Sir F. Crossley -	Cost should be increased -	1939, 1940.			
	Mr. R. A. McFie-					
		Written Answers.	Page.	Chamber of Commerce :-		
Lord Chelmsford -	Cannot say whether the present system strikes the mean of not discouraging invention nor encouraging speculative Patents.	179.		Wolverhampton	To cover expenses of Court, Patent Office, and Registry.	196.
Sir R. Palmer -	Cannot suggest any alteration -	180.		Belfast -	A first payment of 18 <i>l.</i> with 13 annual instalments of 4 <i>l.</i> each.	197.
Sir John Romilly -	Approves the present system -	178.		Glasgow :-		
Mr. H. Blair -	Approves the present system -	212.		Mr. Rankine -	Costs to be sufficient to pay expenses of Patent Department, payable by instalments.	198.
Mr. M. Henry -	Proposes no alteration -	185.		Mr. Hunt -	Costs of Patent not to be decreased, but 100 <i>l.</i> be paid by five consecutive annual instalments of 20 <i>l.</i> , commencing from the third year.	-
Chamber of Commerce :-				Mr. J. Richardson	Thinks there is reason to increase rather than diminish the cost, unless other checks are adopted. Some advantage in payment by annual instalments.	199.
Leeds -	Approves the present system -	183.		Mr. E. Henry -	Diminished annual instalments.	-
Huddersfield -	Would diminish the fees in a proportion sufficient to meet only the expenses of the Patent Office.	184.		Mr. J. Finlay -	Would diminish costs of Patents, and pay by annual instalments.	-
Nottingham -	Sees no reason to alter the present system.	184.		Mr. J. Ronald -	Costs to be small and payable in one sum.	-
Birmingham -	Would retain the first payment, but diminish the second and third to such a proportion as would meet only the expenses of the Patent Office.	215.		Mr. A. Pattison -	No objection to present system.	-
Mr. G. Jabet -	Suggests no alteration -	218.		Messrs. Mitchell and Whytlaw.	Would have the costs reduced. The whole expense should not be more than 50 <i>l.</i> , spread over two years.	-
Bristol -	Proposes registration with a fee of 10 <i>l.</i>	191.		Mr. W. Macfarlane	The costs should be diminished to not more than what is necessary to cover all expenses.	-
Bradford :-				Institution of Civil Engineers of Scotland.	Majority in favour of reducing the cost to mere expenses of the Patent Office ; but for retaining the present mode of payment.	-
Mr. J. Lister -	Would increase the first payment to 50 <i>l.</i> , with a second payment of 50 <i>l.</i> after three years.	184.		Philosophical Society	A payment of 50 <i>l.</i> at the end of the fifth year only, and no further payments.	205.
Mr. James Holden	Proposes no alteration -	185.				
Mr. W. Eeroyd -	Objects <i>in toto</i> to the Patent system.	-				
Mr. G. H. Leather	Proposes no alteration.	-				
Manchester :-						
Mr. J. Fletcher -	Proposes no alteration -	190.				
Mr. E. Leigh -	Would postpone the payment of 50 <i>l.</i> till the end of five years, and do away with the payment of 100 <i>l.</i>	182.				
Mr. P. J. Linsey -	Reduce first cost to 6 <i>l.</i> Retain second and third payments.	183.				

2. Does the present mode of obtaining Patents appear to you satisfactory? Is it your opinion that there ought to be a preliminary investigation of a more searching character than that which at present takes place? If so, how should the tribunal be constituted before which such investigation shall be conducted, and should the judgment of such tribunal be final?

	<i>Oral Evidence.</i>	<i>Question.</i>
Mr. H. Reeve.		
Mr. L. Edmunds -	Against preliminary examination.	576, p. 31.
Mr. Bennett Woodcroft.	Against preliminary examination.	89-94, 122-130.
Mr. W. Carpmael -	Against preliminary examination.	259-273, 289-295, 319.
Mr. W. Spence -	Against preliminary examination. The present system to be more strictly carried out.	600-608, 713-716.
Mr. A. V. Newton	Finds difficulty in alteration of the present system. Suggests a certificate to be given by Board of Examiners.	1834-1841.
Mr. W. R. Grove -	Suggests some stricter preliminary examination by body of assistants to the law officers. Suggests alternatives.	971, 975-992, 994-999, 1054 & 1055, 1056.
Mr. M. E. Smith -	Would have stricter preliminary examinations by assessors selected by the Attorney-General from a panel to be appointed by the judge of a special tribunal.	1236-1239, 1253 & 1254.
Mr. T. Webster -	Objects to the present practice before the law officers. Would have examination as to novelty, so far as regards documents. Certificate of examiners with appeal, which should be conclusive.	1670-1693, 1705-1709, 2027-2040.
Mr. J. S. Russell -	Would have a stricter preliminary examination by mixed tribunal of lawyer and experts.	725, 743-748.
Mr. J. Platt -	Would have preliminary examination by tribunal of lawyer and experts, with right of appeal to patentee.	837-841.
Sir W. Armstrong	Would have stricter examination by special tribunal.	1099-1102, 1118, 1123.
Mr. R. Roberts -	Would have a stricter examination, not to conclude Patent but by way of certificate.	1360-1370.
Mr. M. Curtis -	Objects to change present system.	1448.
Sir F. Crossley -	Approves the present system. Suggests a modified examination by special tribunal, with right of appeal.	1549-1561, 1583-1588.
Mr. R. A. McFie -	Would have preliminary examination as to novelty by experts.	1941-1944.
	<i>Written Answers.</i>	<i>Page.</i>
Lord Chelmsford -	Present system not satisfactory. Would have examination as to novelty made in the Patent Office.	179.
Sir R. Palmer -	Satisfied with present system. States objections to others.	180.
Sir John Romilly -	Thinks further preliminary examination would be injurious.	178.
Mr. H. Blair -	Would have a preliminary examination as to utility and novelty, so far as regards printed publication, by two experts and a lawyer.	212.
Mr. M. Henry -	Satisfied with the present system. The preliminary examination should be final.	185.
Chamber of Commerce:—		
Leeds -	Would have a permanent officer in the place of the law officers.	183.
Huddersfield -	Approves the present system -	184.
Nottingham -	Approves the present system -	184.
Birmingham -	Objects to preliminary examination.	215.
Mr. G. Jabet -	Approves the present system -	218.
Bristol -	Would grant Patent by registration, upon examination as to sufficiency of specification.	191.

		<i>Page.</i>
Bradford:—		
Mr. J. Lister.		
Mr. J. Holden -	Would have preliminary examination by special tribunal.	185.
Mr. W. Eeroyd.		
Mr. G. H. Leather -	Would have examination by tribunal of three experts.	—
Manchester:—		
Mr. J. Fletcher -	Would have examination by Board.	190.
Mr. E. Leigh -	Satisfied with the present system. Examination, if any, to go only to novelty.	182.
Mr. P. J. Linsey -	Opposed to all preliminary examination, except by way of certificate.	183.
Mr. E. F. Hughes	Examination by Board as to novelty. Would abolish provisional specifications and allow Patents of addition.	182.
Patent Law Reform Association	Yes - - - -	212.
Halifax:—		
Mr. E. Ackroyd -	Would have examination by a Board as to novelty. Certificate to be not conclusive.	188.
Messrs. Crossley -	Approves the present system -	189.
Mr. W. Tasker -	Agrees with Mr. E. Ackroyd.	—
Liverpool:—		
Messrs. McFie -	Present system is not satisfactory. Would have jury of experts to report as to novelty with right of appeal.	—
Mr. J. Spence -	Present system is not satisfactory. A special tribunal should examine as to novelty and utility.	192.
Mr. J. Farrie -	Not satisfactory. A special tribunal should examine as to novelty and practicability.	—
Mr. John Potter -	More searching investigation -	186.
Inventors' Institute -	Preliminary investigation, as to novelty, by Board of examiners. Their report if unfavourable not to conclude the Patent.	194.
Mr. E. A. Cooper -	As the preceding answer, with an appeal from the report to a judge of the Patent Court.	209.
Chamber of Commerce:—		
Wolverhampton -	Not satisfactory. A preliminary examination.	196.
Belfast -	Strict preliminary investigation as to novelty by a Judicial Commission in place of the Law Officers, with appeal to the Privy Council.	197.
Glasgow:—		
Mr. Rankine -	Satisfied with mode of obtaining Patents. Thinks investigation impracticable.	199.
Mr. Hunt -	Strict investigation as to novelty, but not to conclude the Patent.	—
Mr. J. Richardson	Would have a thorough investigation, but not to conclude the Patent.	200.
Mr. E. Henry -	Yes. Do not know. Yes.	—
Mr. J. Finlay -	Not satisfactory. Would have a Board for preliminary investigation as to novelty.	—
Mr. J. Ronald -	Not satisfactory. Specifications to be more accurately drawn up.	—
Mr. Pattison -	Would have tribunals of scientific men to decide finally, as to novelty, on applications for Patents.	—
Messrs. Macfarlane & Co.	No. Yes. Preliminary investigation not to be conclusive.	—
Institute of Engineers of Scotland.	No. A more searching investigation as to novelty. Scientific and practical men to conduct investigation, which should not be conclusive.	—
Philosophical Society.	Preliminary investigation, but not to be conclusive.	205.

3. Should the investigation be ex-parte or public, and subject to opposition? Should the present practice as to caveats be adhered to?

	<i>Oral Evidence.</i>	<i>Question.</i>
Mr. H. Reeve.		
Mr. L. Edmunds.		
Mr. R. Woodcroft.		

Mr. W. Carpmael.		<i>Question.</i>
Mr. W. Spence -	Ex parte - - -	613 & 614.
Mr. A. V. Newton.		
Mr. W. B. Grove -	As a rule, ex parte -	998-996.
Mr. M. C. Smith -	Ex parte, with power to oppose	1240-1242.
Mr. T. Webster.		
Mr. J. S. Russell -	Ex parte - - -	774 & 775.
Mr. J. Platt -	Ex parte - - -	842.
Sir W. Armstrong	Would have opposition -	1153-1155.
Mr. B. Roberts.		
Mr. M. Curtis -	Should be public -	1460.
Sir F. Crossley.		
Mr. R. A. McFie.		

	<i>Written Answers.</i>	<i>Page.</i>
Lord Chelmsford -	Ex parte. Approves caveat system.	179.
Sir R. Palmer -	Subject to opposition. Approves present system.	180.
Sir John Romilly -	Objects to suggested examination. Approves present practice as to caveats.	178.
Mr. H. Blair -	Ex parte, with opposition as now. Approves system of caveats.	213.
Mr. M. Henry -	Ex parte -	186.
<i>Chamber of Commerce:—</i>		
Leeds -	Refers to answer, Question 2. Approves the system of caveats.	183.
Huddersfield -	See answer to Question 2 -	184.
Nottingham -	See answer to Question 2 -	184.
Birmingham :—		
Mr. G. Jabet -	Examination to be before special tribunal. Retain system of caveats.	218.
<i>Bristol.</i>		
<i>Bradford :—</i>		
Mr. J. Lister.		
Mr. J. Holden -	Subject to opposition -	185.
Mr. W. Ecroyd.		
Mr. G. H. Leather	Public.	—
<i>Manchester :—</i>		
Mr. J. Fletcher -	Subject to opposition -	100.
Mr. E. Leigh -	Would abolish caveats -	182.
Mr. P. J. Linsey.	- - - -	183.
Mr. E. J. Hughes	Ex parte, with opposition on appeal. Would retain caveats.	182.
Patent Law Reform Association	Adhere to present practice -	212.
<i>Halifax :—</i>		
Mr. E. Ackroyd -	Ex-parte, with opposition on appeal and in cases of fraud.	188.
Messrs. Crossley -	Approve present system of caveats.	189.
Mr. W. Tasker -	Agrees with Mr. E. Ackroyd.	—
<i>Liverpool :—</i>		
Messrs. McFie -		
Mr. J. Spence -	Public, and subject to opposition	192.
Mr. J. Farrie -	Public, and subject to opposition. Approves present practice as to caveats.	—
Mr. John Potter -	Private hearing -	187.
Inventors' Institute -	Opposed to public investigation. See system proposed in answer to Question 2.	195.
Mr. E. A. Cooper	Private; but subject to opposition. System of caveats of little use.	209.
<i>Chamber of Commerce :—</i>		
Wolverhampton -	Public investigation -	196.
Belfast -	Preliminary investigation ex-parte.	197.
<i>Glasgow :—</i>		
Mr. Rankine -	Private, if any -	200.
Mr. Hunt -	See Answer 2. Caveats of little use.	—
Mr. J. Richardson	Doubtful as to caveats.	—
Mr. E. Henry -	Public; subject to opposition.	—
Mr. J. Finlay -	Either party to appear by counsel. Caveats, under the present system, good.	—
Mr. J. Ronald -	Approves present system; objector, failing, should pay costs.	—
Mr. A. Pattison -	Public, and subject to opposition. Approves system of caveats in answer to Nos. 1, 2, 3.	—
Mr. A. Brown -	Approves present system.	—
Messrs. Mitchell & Whytlaw		
Mr. W. McFarlane	Public. Opposition only to go to novelty. Approves caveats.	—

Institution of Civil Engineers of Scotland.	Approves present system. Opposition only to go to novelty.	<i>Page.</i> 201
Philosophical Society.	Public. Opposition of little value.	205

4. Have you reason to suppose that public inconvenience is caused by the multiplicity of Patents?

	<i>Oral Evidence</i>	<i>Question.</i>
Mr. H. Reeve.		
Mr. L. Edmunds.		
Mr. B. Woodcroft.		
Mr. W. Carpmael	No - - - -	274-276, 296.
Mr. W. Spence -	No - - - -	615.
Mr. A. V. Newton	No - - - -	1842-1846.
Mr. W. R. Grove	Yes - - - -	972-980.
Mr. M. E. Smith	Yes - - - -	1243 & 1244.
Mr. T. Webster.		
Mr. J. S. Russell	Yes - - - -	767 & 768.
Mr. J. Platt -	Yes - - - -	843 & 844, 872.
Sir W. Armstrong	Yes - - - -	1104-1111, 1137-1140.
Mr. R. Roberts -	No - - - -	1338-1341, 1373-1376, 1385, 1428-1430.
Mr. M. Curtis -	Admits possible inconvenience.	1441-1444.
Sir F. Crossley.		
Mr. R. A. McFie	Expects future inconvenience.	1944-1947, 1954- 1959.

	<i>Written Answers.</i>	<i>Page.</i>
Lord Chelmsford -	No grounds for forming an opinion.	179.
Sir R. Palmer -	No practical knowledge -	180.
Sir J. Romilly -	Yes - - - -	178.
Mr. H. Blair.	- - - -	213.
Mr. M. Henry -	No - - - -	186
<i>Chamber of Commerce :—</i>		
Leeds -	Can suggest no remedy -	183.
Huddersfield -	Inconvenience to later patentees. Remedy by good system of indexes and digest of decisions.	184.
Nottingham -	To the trade, not to the public	184.
Birmingham -	No - - - -	215.
Mr. G. Jabet -	Not on the whole -	218.
<i>Bristol.</i>		
<i>Bradford :—</i>		
Mr. J. Lister -	Yes - - - -	184.
Mr. J. Holden -	Yes - - - -	185.
Mr. W. Ecroyd -	Yes.	—
Mr. G. H. Leather.		
<i>Manchester :—</i>		
Mr. J. Fletcher -	Would not be under system proposed in answer No. 2.	190.
Mr. E. Leigh -	No - - - -	182.
Mr. P. J. Linsey.		
Mr. E. J. Hughes	No - - - -	182.
Patent Law Reform Association	Yes; to be remedied by a preliminary examination as to novelty.	212.
<i>Halifax :—</i>		
Mr. E. Ackroyd -	Yes. Would increase means of ascertaining invalid Patents.	188.
Messrs. Crossley -	No - - - -	189.
Mr. W. Tasker -	Agrees with Mr. E. Ackroyd.	—
<i>Liverpool :—</i>		
Messrs. McFie -	Yes.	—
Mr. J. Spence -	Yes - - - -	192.
Mr. J. Farrie -	Yes.	—
Mr. John Potter -	No - - - -	187.
Inventors' Institute -	No - - - -	195.
Mr. E. A. Cooper -	No; but Courts are too lenient towards Patents taken out for matters not properly patentable.	209.
<i>Chamber of Commerce :—</i>		
Wolverhampton -	Yes - - - -	196.
Belfast -	Yes. Remedy by refusal for want of novelty and by annual payments.	197.
<i>Glasgow :—</i>		
Mr. J. M. Rankine	Yes - - - -	201.
Mr. E. Hunt -	Not as yet.	—
J. Richardson & Co.	Yes.	—
Mr. E. Henry -	Yes.	—
Mr. J. Finlay -	No.	—
Mr. J. Ronald -	Too many Patents are granted, but it is not the business of the Law to remedy this.	—

Mr. A. M. Pattison	Yes	-	Page. 201.
Mr. W. Brown	Yes.	-	-
J. Wingate & Co.	Yes.	-	-
Mitchell & Whyt- law.	See Answer to No. 5.	-	-
W. McFarlane & Co	No.	-	-
Institute of Civil Engineers.	Yes.	-	-
Philosophical So- ciety.	Yes	-	205.

5. Do you consider that Patents ought to be refused on the ground of the trifling and frivolous nature of the inventions for which they are claimed?

	Oral Evidence.	Question.
Mr. H. Reeve.		
Mr. L. Edmunds.		
Mr. B. Woodcroft.		
Mr. W. Carmichael	No	307-314.
Mr. W. Spence	No	615.
Mr. A. V. Newton	No; but for obvious applica- tions.	1847-1849, 1853-1855.
Mr. W. R. Grove	Yes	972, 976- 978, 1052 & 1053.
Mr. M. E. Smith	Yes	1238, 1247, 1257-1264.
Mr. T. Webster	No	1710-1719, 1725-1735.
Mr. J. S. Russell	No; only Patents manifestly not useful.	758, 759, 772.
Mr. J. Platt	No	850-865.
Sir W. Armstrong	Yes	1172 (note).
Mr. B. Roberts	No	1378.
Mr. M. Curtis	No	1449, 1451, 1466-1473.
Sir F. Crossley	No	1549, 1552 and 1553.
Mr. R. A. McFie	Thinks not	1975.
	Written Answers.	Page.
Lord Chelmsford	No	179.
Sir R. Palmer	Yes, at the discretion of the Law Officer, with right of appeal.	180.
Sir John Romilly	The question of frivolity cannot be decided.	178.
Mr. H. Blair	Agrees with last answer	213.
Mr. M. Henry	No	186.
Chamber of Com- merce :-		
Leeds	The question cannot be decided	183.
Huddersfield	No	184.
Nottingham	No	184.
Birmingham	No	215.
Mr. G. Jabet	No	218.
Bristol.		
Bradford :-		
Mr. J. Lister	Utility cannot be estimated	184.
Mr. J. Holden	Yes, if possible	185.
Mr. W. Ecroyd	Agrees with last answer.	-
Mr. G. H. Leather.		
Manchester :-		
Mr. J. Fletcher.	-	190.
Mr. E. Leigh	No	182.
Mr. P. J. Linsey.	-	-
Mr. E. J. Hughes	No	182.
Patent Law Re- form Association	No	212.
Halifax :-		
Mr. E. Ackroyd	No	188.
Messrs. Crossley	Would give a discretion to the Law Officers.	189.
Mr. W. Tasker	Agrees with Mr. E. Ackroyd.	-
Liverpool :-		
Messrs McFie	Not under the proposed restric- tions.	190.
Mr. J. Spence	Certainly	192.
Mr. J. Farrie	Yes.	-
Mr. John Potter	Cannot say	187.
Inventors' Institute	No	195.
Mr. E. A. Cooper	Difficult to say; but an expert might decide whether inven- tion was a patentable invention.	210.
Chamber of Com- merce :-		
Wolverhampton	Yes	196.
Belfast	No	197.
Glasgow :-		
Mr. Rankine	No.	201.
Mr. Hunt	No examining board can satis- factorily pronounce on the utility of an invention.	-

Messrs. Richardson	Prefer system of compensation to patentee, who should prove the value of his invention.	Page. 202.
Mr. Henry	Yes.	-
Mr. Finlay	Yes; if trifling or frivolous, but not if improvements.	-
Mr. Ronald	Yes.	-
Mr. Pattison	Yes.	-
Messrs. Wingate & Co.	Patents should not be granted for the modification of other inventions	-
Messrs. Mitchell & Whytlaw.	It would be better that a consti- tuted body should have power, before a patent is taken out, to decide whether it is too trifling and frivolous.	-
Messrs. Macfarlane	No.	-
Institute of Civil Engineers of Scotland.	No.	-
Philosophical So- ciety.	Yes, if practicable	205.

6. Should greater facilities be provided for the repeal of invalid Patents?

	Oral Evidence.	Question.
Mr. H. Reeve.		
Mr. L. Edmunds.		
Mr. B. Woodcroft	Yes, by motion	131, 143-146.
Mr. W. Carmichael	Yes	345-354, 485-518.
Mr. W. Spence	Yes	617-622.
Mr. A. V. Newton	Objects to the present system	1858.
Mr. W. B. Grove	Yes	1059-1067.
Mr. M. E. Smith.		
Mr. T. Webster.		
Mr. J. S. Russell.	Satisfied with present system.	907-912.
Mr. J. Platt	Would transfer jurisdiction to a special court, if constituted.	-
Sir W. Armstrong	Yes	1166-1177.
Mr. R. Roberts.		
Mr. M. Curtis	Would have an easier mode of putting in issue the question of validity.	1527.
Sir F. Crossley.		
Mr. R. A. McFie		
	Written Answers.	Page.
Lord Chelmsford	Would take the opinion of the court on questions of law be- fore trial of fact.	179
Sir R. Palmer	By summary proceeding	180.
Sir J. Romilly	Yes	178.
Mr. H. Blair	Prefers present system	213.
Mr. M. Henry	No	186.
Chamber of Com- merce :-		
Leeds	Can only follow from general improvement in trials in courts of law.	183.
Huddersfield	Yes	184.
Nottingham	No	184.
Birmingham	Yes	215.
Mr. G. Jabet	Only to be done by special tri- bunal.	218.
Bristol	By special tribunal, with jury of six experts.	191.
Bradford :-		
Mr. J. Lister.		
Mr. J. Holden	See answer to Question 7	185.
Mr. W. Ecroyd.		
Mr. G. H. Leather.		
Manchester :-		
Mr. J. Fletcher	Repeal to be by and at expense of the Crown.	190.
Mr. E. Leigh	Should be repealed on clear proof of invalidity.	182.
Mr. P. J. Linsey.		
Mr. E. J. Hughes	If possible	182.
Patent Law Re- form Association	Renewal at the end of five years sufficient.	212.
Halifax :-		
Mr. E. Ackroyd	Suggests repeal by public offi- cers.	188.
Messrs. Crossley	Know of no present difficulty	189.
Mr. W. Tasker	Agrees with Mr. E. Ackroyd.	-
Liverpool :-		
Messrs McFie	Yes	190.
Mr. J. Spence	No	192.
Mr. J. Farrie	They should be repealed as soon as possible.	-

		Page.			Page.
Mr. John Potter -	Yes - - - - -	187.	Mr. M. Henry -	Would appoint a special court and judge, with jury of experts for Patent and copyright cases.	186.
Inventors' Institute -	Would not object to such course	195.			
Mr. E. A. Cooper -	Yes; by cheaper process of scire facias before Patent Court.	210.			
<i>Chamber of Commerce:—</i>			<i>Chamber of Commerce:—</i>		
Wolverhampton -	Yes - - - - -	196.	Leeds -	Would have trial by judge with assessors, without jury.	183.
Belfast -	By application, on summons, to the Patent Judge.	197.	Huddersfield -	Would appoint special court -	184.
Glasgow:—			Nottingham -	Considers a change desirable -	184.
Mr. J. M. Rankine -	Yes - - - - -	202.	Birmingham -	Would appoint a special court, with assessors and jury. Have summary proceedings against infringements before local courts.	215.
Mr. E. Hunt -	Not required, if other improvements be adopted.	—			
J. Richardson & Co -	Should be without expense to patentee.	—	Mr. G. Jabet -	Would appoint a judge of Patent cases with assessors, chosen by him, and jury at the option of the parties.	218.
Mr. E. Henry -	Yes.	—			
Mr. J. Finlay -	By cause shown, before Special Court.	—	Bristol -	Refers to answer to Question 6.	191.
Mr. J. Ronald -	Yes.	—	Bradford:—		
Mr. A. M. Pattison -	Give every facility.	—	Mr. J. Lister -	Would make no change -	184.
Mitchell & Whytlaw -	No.	—	Mr. J. Holden -	Would appoint a special court	185.
W. McFarlane & Co -	Not requisite.	—	Mr. W. Ecroyd -	Would try all cases before a jury of experts.	—
Institute of Civil Engineers.	Yes.	—	Mr. G. H. Leather -	Would try all cases before a jury of experts, in the country.	—
Philosophical Society.	Yes, by reduction of costs -	205.	Manchester:—		
7. Do you consider that any change should be made in the tribunal appointed to try actions and suits instituted by Patentees?			Mr. J. Fletcher -	Would appoint special court and judge, aided by a jury of three to five experts.	191.
			Mr. E. Leigh -	Would have trial in local courts with jury of experts, with appeal to special court with jury of twelve experts.	182.
			Mr. P. J. Linsey -	Would have a special tribunal for trial of all patent matters.	183.
			Mr. E. J. Hughes -	Would prefer trial before special court with jury of experts.	182.
			Patent Law Reform Association	Yes; by trial at assizes before jury of experts, with appeal to special Patent Court.	212.
			Halifax:—		
			Mr. E. Ackroyd -	Would appoint one or more special judges, aided by assessors.	188.
			Messrs. Crossley -	Agree with preceding answer -	180.
			Mr. W. Tasker -	Would have trial in the ordinary courts with jury of experts.	—
			Liverpool:—		
			Messrs. McFie.		
			Mr. J. Spence -	See answer to Question 2 -	192.
			Mr. J. Farrie -	Would appoint a special tribunal.	—
			Mr. John Potter -	Refers to his remarks -	187.
			Inventors' Institute	There should be a trial before a special court and judge, with appeal to the Privy Council. Jury to be at the option of either, or by consent of both parties. In the first case to be a jury of experts, in the second an ordinary jury.	195.
			Mr. E. A. Cooper -	Yes, by institution of a special court, with three Patent judges, assisted by board of examiners.	210.
			<i>Chamber of Commerce:—</i>		
			Wolverhampton -	Yes - - - - -	196.
			Belfast -	Retain present jurisdiction. Only question of infringement should be tried, subject to right of defendant to stay proceedings pending an application by him for cancellation.	197.
			Glasgow:—		
			Mr. J. M. Rankine -	Cannot answer - - -	202.
			Mr. E. Hunt -	Trial by special jury of experts.	—
			Mr. E. Henry -	Yes.	—
			Mr. J. Finlay -	Yes.	—
			Mr. J. Ronald -	Trials should be simple and cheap.	—
			Mr. A. M. Pattison -	Trial by experts.	—
			Messrs. Mitchell and Whytlaw.	System bad, but cannot propose amendment.	—
			Messrs. McFarlane & Co.	Would have a special court.	—
			Institute of Civil Engineers.	Would have a cheaper system. Juries should be acquainted with science.	—
			Philosophical Society.	Juries should be composed of scientific and practical men.	205.

8. Should the granting of Licences in your opinion be made compulsory, and can you suggest any practicable method by which this should be done?

	<i>Oral Evidence.</i>	<i>Question.</i>
Mr. H. Reeve. Mr. L. Edmunds. Mr. B. Woodcroft. Mr. W. Carpmael. Mr. W. Spence - Mr. A. V. Newton	Expedient if possible - Yes. Terms to be settled by the court.	678-700. 1890-1899.
Mr. W. R. Grove	Can suggest no practical mode of assessment.	Note, p. 22.
Mr. M. E. Smith	Can suggest no satisfactory scheme.	1314-1318.
Mr. T. Webster	Would be desirable. Is now done to some extent by the Privy Council.	2057, 2067, & 2068.
Mr. J. S. Russell	Yes. Royalty to be assessed by special courts.	724, 749, & 750, 782-788.
Mr. J. Platt	No. Objects to arbitration and to grant of Patent on conditions.	913-926.
Sir W. Armstrong	Yes; assessment by special tribunal in the first instance, with power to amend from time to time.	1182-1219.
Mr. R. Roberts	No.	1421-1423.
Mr. M. Curtis	Cannot suggest any practicable scheme.	1538.
Sir F. Crossley	No	1589-1602.
Mr. R. A. McFie	Yes. Assessment after the expiration of three years.	1964-1974.
	<i>Written Answers.</i>	<i>Page.</i>
Lord Chelmsford	No	180.
Sir R. Palmer	Yes. Might be a condition on granting Patent. Should be a penalty on wilful non-user.	180.
Sir J. Romilly	Not advisable or practicable	178.
Mr. H. Blair	No	213.
Mr. M. Henry	Would require Patent to be worked within a given time.	186.
<i>Chamber of Commerce:—</i>		
Leeds	In certain cases	184.
Huddersfield	Where Patent not worked within three years, royalties should be settled by arbitration.	184.
Nottingham	No	184.
Birmingham	No	215.
Mr. G. Jabet	No	218.
Bristol.		
Bradford:—		
Mr. J. Lister.		
Mr. J. Holden	Would make the working a Patent within three years compulsory except upon cause shown.	185.
Mr. W. Ecroyd.		
Mr. G. H. Leather	Yes.	—
<i>Manchester:—</i>		
Mr. J. Fletcher	Yes	191.
Mr. E. Leigh	Cannot be done	182.
Mr. P. J. Linsey	Should only be so in the case of obstructive patents, on terms to be settled by special court.	183.
Mr. E. J. Hughes	Agrees with last answer	182.
Patent Law Reform Association	No	212.
<i>Halifax:—</i>		
Mr. E. Ackroyd	Would repeal a Patent if not worked within two years, or make licence compulsory.	188.
Messrs. Crossley	No	189.
Mr. W. Tasker	No; but Patent where not worked should be repealed.	—
<i>Liverpool:—</i>		
Messrs. McFie	Yes; or arbitration by the court.	190.
Mr. J. Spence	No compulsion is necessary	192.
Mr. J. Farrie	In favour of compulsion. Sees difficulty in fixing royalties.	—
Mr. John Potter	Yes	187.
Inventors' Institute	No	196.
Mr. E. A. Cowper	No	210.
<i>Chamber of Commerce:—</i>		
Wolverhampton	Patentees should grant licences	196.
Belfast	It would be inconvenient in most cases.	199.

Glasgow:—		<i>Page.</i>
Mr. Rankine	Yes; upon applicant giving security for payment of the licence.	202.
Mr. Hunt	Compulsory licences are most desirable. Proposes a system of Patent income-tax on which value of licence should be assessed.	—
Messrs. Richardson	Yes. If parties cannot agree as to terms, there should be recourse to arbitration.	203.
Mr. Henry	Yes.	—
Mr. Finlay	No.	—
Mr. Ronald	No.	—
Mr. Pattison	Yes, if Patents are to be granted only for inventions new in principle. Would have tribunals that grant Patents to fix the amount.	—
	Not necessary under the present law.	—
Mr. Brown	Not able to answer.	—
Messrs. Wingate	Yes.	—
Messrs. Mitchell & Whytlaw.	No.	—
Messrs. Macfarlane	Yes. Nothing definite proposed.	—
Institute of Civil Engineers of Scotland.		—
Philosophical Society.	Desirable, if it can be done	205.

9. Do you think it expedient that Patents should be granted to importers of foreign inventions?

	<i>Oral Evidence.</i>	<i>Question.</i>
Mr. H. Reeve. Mr. L. Edmunds. Mr. B. Woodcroft. Mr. W. Carpmael. Mr. W. Spence - Mr. A. V. Newton Mr. W. R. Grove Mr. M. E. Smith. Mr. T. Webster. Mr. J. S. Russell Mr. J. Platt	Yes - Yes - Not to mere importers.	701-704. 1900-1904. Note, p. 22.
Sir W. Armstrong	No	809-818.
Mr. R. Roberts	No, only to original inventors	928 & 929, 931-941.
Mr. M. Curtis	No	1220-1228.
Sir F. Crossley	No	1539 & 1540.
Mr. R. A. McFie.	Doubtful	1613-1630.
	<i>Written Answers.</i>	<i>Page.</i>
Lord Chelmsford	Yes	180.
Sir R. Palmer	No	180.
Sir J. Romilly	Yes	179.
Mr. H. Blair	Yes	214.
Mr. M. Henry	Yes	186.
<i>Chamber of Commerce:—</i>		
Leeds	No	184.
Huddersfield	No	184.
Nottingham	Yes	184.
Birmingham	Yes, if article be made in England.	215.
Mr. G. Jabet	Yes	219.
Bristol.		
Bradford:—		
Mr. J. Lister.		
Mr. J. Holden	No	185.
Mr. W. Ecroyd.		
Mr. G. H. Leather	No.	—
<i>Manchester:—</i>		
Mr. J. Fletcher	No	191.
Mr. G. Leigh	No	182.
Mr. P. J. Linsey.		
Mr. E. J. Hughes	Yes, as now.	—
Patent Law Reform Association	No	212.
<i>Halifax:—</i>		
Mr. E. Ackroyd	Only with sanction of a foreign patentee.	188.
Messrs. Crossley	Yes	189.
Mr. W. Tasker	Yes.	—
<i>Liverpool:—</i>		
Messrs. McFie	Yes, as now	190.
Mr. J. Spence	No.	—
Mr. J. Farrie	Not if published first abroad.	—
Inventors' Institute	Yes. Saving rights of foreign inventor.	190.
Mr. E. A. Cowper	Not to a mere importer	210.

<i>Chamber of Commerce :-</i>		<i>Page.</i>
Wolverhampton	No - -	196.
Belfast	No - -	198.
Glasgow :-		
Mr. Rankine	No - - - -	203.
Messrs. Richardson	For a short period only.	—
Mr. Henry	No.	—
Mr. J. Finlay	Yes; but not to exclude the foreign patentee.	—
Mr. Ronald	Yes; if foreigners do the same to us.	—
Mr. Pattison	No.	—
Messrs. Wingate & Co.	No.	—
Messrs. Mitchell & Whytaw.	Yes.	—
Messrs. Macfarlane	No.	—
Mr. Hunt	Only by foreign inventor or his assignee.	—
Mr. Brown	No.	—
Institution of Civil Engineers of Scotland.	No.	—
Philosophical Society.	Only to foreign inventor or his assignees.	205.

10. Do you think it expedient that Patents should be granted to foreigners residing abroad, or to their nominees?

	<i>Oral Evidence.</i>	<i>Question.</i>
Mr. H. Reeve.	Yes; to inventors, in preference to their agents.	Note, pp. 65, 66.
Mr. L. Edmunds.		
Mr. B. Woodcroft.		
Mr. W. Carpmael.		
Mr. W. Spence.		
Mr. A. V. Newton.	Yes	821.
Mr. W. R. Grove		
Mr. M. E. Smith.		
Mr. T. Webster.		
Mr. J. S. Russell		
Mr. J. Platt	To the inventor or his agents	931, 941, & 942.
Sir W. Armstrong	Convenient upon reciprocal terms.	1229-1232.
Mr. R. Roberts.	To inventors or their agents	1539 & 1540.
Mr. M. Curtis		
Sir F. Crossley		
Sir F. Crossley		
Mr. R. A. McFie.	To inventors or their agents, on proof of Patent.	1613-1630.
	<i>Written Answers.</i>	<i>Page.</i>
Lord Chelmsford	Rather to nominees	180.
Sir R. Palmer	To either, where Patent is taken out in their own country, and for the same term.	180.
Sir J. Romilly	To either	179.
Mr. H. Blair	Yes	214.
Mr. M. Henry	Yes	186.
<i>Chamber of Commerce :-</i>		
Leeds	No	184.
Huddersfield	System should be regulated by international agreement.	184.
Nottingham	Only where invention is worked here.	184.
Birmingham	See answer to Question 9	215.
Mr. G. Jabet	To inventors only	219.
Bristol.		
Bradford :-		
Mr. J. Lister.	To either	185.
Mr. J. Holden		
Mr. W. Eeroyd.		
Mr. G. H. Leather	Yes.	—
Manchester :-		
Mr. J. Fletcher	To inventors only	191.
Mr. E. Leigh	Yes; but not to agents	182.
Mr. P. J. Linsey.	Yes, as now	182.
Mr. E. J. Hughes		
Patent Law Reform Association	Yes	212.
Halifax :-		
Mr. E. Ackroyd	To either	188.
Messrs. Crossley	To either	189.
Mr. W. Tasker	To either.	—
Liverpool :-		
Messrs. McFie	Yes; licences to be granted by agent here.	190.
Mr. J. Spence	No	192.
Mr. J. Farrie	See preceding answer.	—
Inventors' Institute	No objection to existing practice	196.
Mr. E. A. Cowper	Only to authorized agents	210.

<i>Chamber of Commerce :-</i>		<i>Page.</i>
Belfast	Yes; application to be within given time from date of foreign Patent, and Patent to cease with the same.	198.
Glasgow :-		
Mr. Rankine	Yes	203.
Mr. Hunt	Yes; with preference to inventor or his assignee for the first one or two years from the date of the foreign Patent.	—
Messrs. Richardson	Yes; if a radical reform is introduced on other points.	—
Mr. Henry	No.	—
Mr. Finlay	Yes; if they are worked and made generally available.	—
Mr. Ronald	Yes; if foreigners do the same to us.	—
Mr. A. M. Pattison	Yes.	—
Mr. W. Brown	No.	—
Wingate & Co.	No.	—
Mitchell & Whytaw.	Yes	204.
W. McFarlane & Co	Yes.	—
Institute of Civil Engineers.	Yes.	—
Philosophical Society.	Only to foreign inventor or his assignees.	205.

11. Is it expedient to make any, and if so, what alterations in the law relating to prolongations and confirmations?

	<i>Oral Evidence.</i>	<i>Question.</i>
Mr. H. Reeve	Can suggest no alteration as to confirmations. Prolongations to be applied for before a special tribunal.	1749-1804.
Mr. L. Edmunds		
Mr. B. Woodcroft.	Prolongations should be granted by the Lord Chancellor or Lords Justices.	580, p. 16.
Mr. W. Carpmael.		
Mr. W. Spence.	Present law to be worked by special tribunal.	1905-1918.
Mr. A. V. Newton		
Mr. W. B. Grove.	Applications for prolongation should be made to special court at the end of three and seven years.	822, 823.
Mr. M. E. Smith.		
Mr. T. Webster.		
Mr. J. S. Russell		
Mr. J. Platt	Would grant prolongations on conditions.	947-949.
Sir W. Armstrong.	Satisfied with present system	1540.
Mr. R. Roberts.		
Mr. M. Curtis		
Sir F. Crossley.		
Mr. R. A. McFie.		
	<i>Written Answers.</i>	<i>Page.</i>
Lord Chelmsford	No change	180.
Sir R. Palmer	No change	181.
Sir J. Romilly	No change, unless on appointment of a special court.	179.
Mr. H. Blair	No change	214.
Mr. M. Henry	No change, except in jurisdiction.	186.
<i>Chamber of Commerce :-</i>		
Leeds	No change	184.
Huddersfield	No change, except in jurisdiction.	184.
Nottingham	No change	184.
Birmingham	No change	215.
Mr. G. Jabet	No change, except in jurisdiction.	219.
Bristol.		
Bradford :-		
Mr. J. Lister.	Would increase the facilities	185.
Mr. J. Holder		
Mr. W. Eeroyd.		
Mr. G. H. Leather	Objects to prolongations.	—
Manchester :-		
Mr. J. Fletcher	No change	191.
Mr. E. Leigh	No change	182.
Mr. P. J. Linsey.	No change, except in jurisdiction.	182.
Mr. E. J. Hughes		
Patent Law Reform Association	- - - -	212.

			<i>Chamber of Commerce:—</i>		
Halifax :—		<i>Page.</i>	Leeds -	Would give right to disclaim provisional specification within six months.	184.
Mr. E. Ackroyd -	No change, except in jurisdiction.	188.	Huddersfield -	See answer to Question 11	184.
Messrs. Crossley -	No - - - - -	189.	Nottingham -	Would give every facility to disclaimers.	184.
Mr. W. Tasker -	No.	—	Birmingham -	Would make no change - -	215.
Liverpool :—			Mr. G. Jabet.		
Messrs. McFie -	English Patent should expire with foreign Patent in all cases.	190.	Bristol.		
Mr. J. Spence -	Can suggest no alteration	192.	Bradford :—		
Mr. J. Farrie -	Can suggest no alteration.	—	Mr. J. Lister.		
Inventors' Institute -	Prolongations and confirmations should be more freely granted.	196.	Mr. J. Holden -	Would allow additions	185.
Mr. E. A. Cowper -	Patents to be for 21 years, without further prolongation.	210.	Mr. W. Eckroyd.	Objects to disclaimers.	—
<i>Chamber of Commerce:—</i>			Mr. G. H. Leather		
Belfast -	Jurisdiction to be given to Special Judge with appeal to Privy Council.	198.	Manchester :—		
Glasgow :—			Mr. J. Fletcher -	Disclaimer of an essential part not to be allowed.	191.
Mr. J. M. Rankine -	Not prepared to answer -	204.	Mr. E. Leigh -	No change - - -	182.
Mr. E. Hunt -	No change required.	—	Mr. P. J. Linsey.		
J. Richardson & Co	Term to be limited to that in foreign countries.	—	Mr. E. J. Hughes	No change - - -	182.
Mr. E. Henry -	Cannot say.	—	Patent Law Reform Association	Yes; disclaimer to be dated with original Specification.	212.
Mr. J. Finlay -	Thinks 14 years long enough, but would not make a change.	—	Halifax :—		
Mr. J. Ronald -	No prolongation.	—	Mr. E. Ackroyd -	Actions should lie after disclaimer for parts not disclaimed.	188.
Mr. A. M. Pattison	Thinks not.	—	Messrs. Crossley -	No change.	189.
W. McFarlane & Co	No suggestion.	—	Mr. W. Tasker -	Would allow disclaimer of matter not new.	—
Mr. W. Brown -	No remarks to make.	—	Liverpool :—		
Institute of Civil Engineers.	No change as to prolongations, unless term is enlarged to 17 or 21 years. Abolish confirmation.	—	Messrs. McFie -		
Philosophical Society.	Cost should be diminished -	205.	Mr. J. Spence -	Not under the present system -	192.
			Mr. J. Farrie -	No suggestion to make.	—
			Inventors' Institute -	Would have greater consistency of practice in allowing disclaimers. Memorandum of addition to be allowed at a small cost.	196.
12. Is it expedient to make any, and if so, what alteration in the law respecting disclaimers and memoranda of alterations ?			Mr. E. A. Cowper -	Disclaimers are admitted too easily.	210.
			<i>Chamber of Commerce:—</i>		
{	Mr. H. Reeve.	<i>Oral Evidence.</i>	Belfast -	Give jurisdiction to Special Judge.	198.
	Mr. L. Edmunds.		Glasgow :—		
	Mr. B. Woodcroft	No - - - - -	Mr. Rankine -	Not prepared to answer -	204.
	Mr. W. Carpmael.		Mr. Hunt -	Disclaimers should be allowed without the present trouble and expense. Allow Patents of improvement.	—
	Mr. W. Spence.		Mr. Finlay -	Disclaimers in certain cases are useful.	—
{	Mr. A. V. Newton	Would allow verbal alteration in claim.	Mr. E. Henry -	Does not know.	—
	Mr. W. R. Grove.		Mr. Ronald -	Would let Patent stand or fall according to the first Specification.	—
	Mr. M. E. Smith.		Mr. Pattison -	No. Abolish Patent laws.	—
	Mr. T. Webster.		Mr. Brown -	No opinion.	—
	Mr. J. S. Russell.		Messrs. Mitchell & Whytlaw.	No opinion on this or preceding Question. There should be an appeal to the Lord Chancellor or Privy Council.	205.
{	Mr. J. Platt.		Messrs. Macfarlane	Think Patent rights should not be less than 21 years.	—
	Sir W. Armstrong.		Institute of Engineers of Scotland.	The expenses connected with disclaimers should be reduced.	—
	Mr. R. Roberts.		Philosophical Society.	Would reduce the cost.	—
	Mr. M. Curtis -	Would give greater facilities to patentees.			
	Sir F. Crossley -	Would use greater strictness towards patentees. Infringement before disclaimer should give cause of action in respect of part not disclaimed.			
			<i>Written Answers.</i>		
			<i>Page.</i>		
Lord Chelmsford -	Objects <i>in toto</i> to either	180.			
Sir R. Palmer -	Would make no change - -	181.			
Sir John Romilly -	Would make no change - -	179.			
Mr. H. Blair -	Can make no suggestion -	215.			
Mr. M. Henry -	Would increase the facilities to patentees.	186.			

MINUTES OF THE EVIDENCE

TAKEN BEFORE

THE COMMISSIONERS

APPOINTED TO INQUIRE INTO

THE WORKING OF THE LAW RELATING TO LETTERS PATENT FOR INVENTIONS.

Thursday, 20th November 1862.

PRESENT :

The Right Hon. LORD STANLEY, M.P.
The Right Hon. SIR WILLIAM ERLE.
VICE-CHANCELLOR SIR W. PAGE WOOD.

W. R. GROVE, Esq., Q.C.
W. M. HINDMARCH, Esq., Q.C.
WILLIAM FAIRBAIRN, Esq.

THE RIGHT HON. LORD STANLEY IN THE CHAIR.

BENNET WOODCROFT, Esq., F.R.S., examined.

1. (*Chairman.*) You are, I believe, in charge of the Patent Office?—I am, Superintendent of Specifications.

2. For how many years have you held that post?—Since the new law came into operation in the year 1852.

3. Was the office itself created at that time?—It was created by the Act of 1852, the Patent Law Amendment Act.

4. Up to that time, had there been no place of deposit for Specifications?—There had been three distinct places of deposit for Specifications in Chancery, namely, the Rolls Chapel Office, the Enrolment Office, and the Petty Bag Office.

5. After the Act of 1852, were those three offices brought into one?—The Specifications were not removed, but the business of those three offices was conducted in the new office.

6. (*Mr. Fairbairn.*) Were they amalgamated?—No, the Specifications which were, and still are, in those offices, were subsequently printed, and the printed copies were brought into the Great Seal Patent Office, under the Act of 1852.

7. (*Mr. Hindmarch.*) Up to that time they had been enrolled?—Yes.

8. After that time they ceased to be enrolled, but the Specifications themselves were deposited?—The Specifications were filed.

9. (*Chairman.*) Will you state to us the nature of the duties which you have to discharge?—My principal duty is, when required, to advise the Law Officers in cases of reference of Provisional Specifications, and in cases of opposition to the grants of Letters Patent; also to advise the Lord Chancellor in cases of opposition to the sealing of Letters Patent which his Lordship may refer to me. I am Superintendent of the Specification Department, in which an extensive correspondence is carried on, and the whole of the Commissioners of Patents' publications are prepared and published; and in which Department there is also a large public free library. I am likewise Superintendent of the Patent Museum at South Kensington, which is daily open free, and includes a large collection of machines and models, a gallery of portraits of inventors, and a complete set of the Commissioners of Patents' publications.

10. That publication was commenced shortly after the commencement of the Act, was it not, and has continued down to the present time?—Yes, the Commissioners print a variety of documents, besides the

Specifications and indices. They print a journal twice a week, showing the Patents which have been granted all over the world, as well as in England.

11. (*Mr. Fairbairn.*) When did that commence?—I suggested to the Commissioners of Patents in 1853 that a circular relating to Patents should be published on the same days as the London Gazette, to furnish inventors, at considerably less cost, not only with all the notices respecting Patents published in the Gazette, but also with other valuable information. The permission of the Commissioners having been obtained, the first number of the Journal was published accordingly on the 7th of January 1854.

12. Have the indices been published up to the present time?—The indices have been published up to the present time.

13. You still continue to prepare for publication these indices, do you not?—We continue them year by year; in fact we have them brought up in manuscript to the day—any one coming to the office can see what has taken place. If you know the subject-matter, or the date, or the name of the Patentee, you can learn anything up to the latest period.

14. (*Chairman.*) Is it not a fact, that any one coming into your office, and making an inquiry in the proper quarter, can ascertain what is the nature of every Patent which has been taken out since Patents were granted in this country?—Yes, in a few minutes.

15. (*Mr. Hindmarch.*) The fact is, I believe, that you have a general index of all the Patents granted under the old law up to October 1852, and since that time, annual indices of every Patent granted under the new law?—We have, and in addition to that we keep manuscript copies up to the very hour. If a Patent was granted yesterday, we shall have it indexed in three different ways to-day.

16. (*Mr. Grove.*) Do you consolidate your indices at any time?—At the end of the year.

17. (*Vice-Chancellor Wood.*) Does the annual index go to the general index?—It is bound not with it, but separate.

18. (*Mr. Grove.*) The annual index might be bound up with the general index, but you would have to look in two places for a given subject, namely, in the general index of all the past Patents, and in the annual index. At any period do you consolidate the annual indices with the general index, so that in one volume you get the information required?—The volume would be too large.

*B. Woodcroft,
Esq., F.R.S.*

20 Nov. 1862.

*B. Woodcroft,
Esq., F.R.S.*

20 Nov. 1862.

19. I mean one work?—It is one work.

20. (*Mr. Fairbairn.*) Any person wishing to take out a Patent, can by referring to those indices see whether he has been anticipated in the particular invention or not?—Yes; from the subject-matter index he can find out anything.

21. (*Vice-Chancellor Wood.*) The subject-matter index is regularly posted up?—Yes, up to the day; every morning you see what was finished on the previous day.

22. (*Chairman.*) And in addition to that you are in course of making detailed indices of every Patent taken out?—In addition to that we have abstracts of certain classes; for instance, of all the weaving machines we print a short abstract, having regard to the full Specification. I may here remark that after the preparation of the Appendix to the Specifications of reaping machines, the idea suggested itself to me that the publication of abstracts or abridgments of Specifications, in classes and chronologically arranged, would be of very great importance to inventors. On the 5th December 1856 the consent of the Commissioners of Patents was obtained for the preparation and publication of such abridgments; and the work has been proceeded with to the present time.

23. (*Mr. Hindmarch.*) Is there any fee now payable by persons coming to make inquiry?—No.

24. There used to be, I believe, a shilling by the old law?—In two offices it was a shilling, and in one office, namely, the Petty Bag Office, it was 3s. 6d.

25. (*Chairman.*) At present any person coming within reasonable hours may make his inquiry absolutely without charge; is that so?—Yes, we have a library pretty well filled, and persons have no need of any introduction; it is perfectly free. Knowing how much a library of works relating to Patents and other scientific publications was needed for reference by inventors, I commenced this library with my own collection of books. It was opened, with the sanction of the Commissioners of Patents, on the 5th March 1855.

26. (*Mr. Fairbairn.*) Is there any person there to direct an applicant to any particular book?—There is Mr. Atkinson, the principal librarian, together with two sub-librarians, and several assistant clerks.

27. (*Chairman.*) Have you any means of ascertaining what is the number of Patents which have been taken out since the passing of the new law?—About 3,000 a year.

28. Is that number increasing or diminishing?—The number keeps about the same; I do not think that there is either increase or diminution.

29. (*Vice-Chancellor Wood.*) Do you recollect what the numbers were in the last two or three years before the alteration of the law?—There was a yearly increase from the first granting of Patents to the last year. From 1800 to about 1850 I should think that the increase would be several hundred Patents a year.

30. What would be the largest number in any one year anterior to the passing of that Act?—About 500 to 600 a year.

31. (*Chairman.*) Then the effect of the new law, which materially reduced the cost of taking out Patents, has been greatly to increase the number of Patents?—Greatly to increase the number at first, but they do not increase yearly as formerly. The publication keeps them down to a large extent. I attribute it to the publication; persons find out that they have been anticipated.

32. (*Mr. Fairbairn.*) I suppose that the average has been very nearly the same for some years past?—As nearly as can be. I think that one day last year and one day this year the number was the same, to a single Patent.

33. (*Chairman.*) If I recollect rightly a Patent is now paid for at three different intervals of time?—It is so.

34. There is a payment in the first instance when the Patent is taken out; there is a second payment

if it is continued beyond a certain period?—Three years.

35. And there is a third payment at the end of seven years?—Yes.

36. Shall you be prepared to produce figures showing us the total number of Patents taken out; how many are now dropped at the end of the three years, and how many at the end of the seven years?—I can furnish exact statements of that at a future period.

37. But we may take it generally, that by far the greater proportion of the Patents which are taken out are suffered to expire between the second and the third periods of payment?—Yes.

38. (*Mr. Fairbairn.*) Not many of them come to maturity?—A fewer number than was granted under the old law.

39. (*Sir W. Erle.*) Positively fewer?—Positively fewer; fewer remain after the seven years.

40. (*Mr. Grove.*) Then out of your 3,000 you would have a less number than 500, taking it roughly, at the end of the seven years?—Yes; before the expiration of seven years, in fact.

41. (*Chairman.*) Can you state what is the payment made at each stage?—25*l.* at the first, then 50*l.*, and then 100*l.*

42. (*Mr. Hindmarch.*) The 10*l.* is paid in two sums, is it not?—Yes; 5*l.* on the deposit of the Provisional Specification.

43. (*Chairman.*) As we understand, those payments collectively cover the whole expenses of the Patent Office, and leave a considerable surplus?—They leave a large surplus.

44. Can you inform us what that surplus is?—I can bring the printed reports. I cannot tell from memory; the report to Parliament yearly states what the surplus is. I should think that there is now a surplus of 120,000*l.* altogether.

45. A part of that surplus is appropriated, is it not, to the printing of the old descriptions of Patents, those under the old law, so as to complete the history of Patents up to the present time?—Those have been finished for fully four or five years, there is nothing but the current work to be done. There is a surplus of 30,000*l.* or 40,000*l.* yearly.

46. (*Mr. Fairbairn.*) Where does that surplus go to?—To the Chancellor of the Exchequer, I conceive.

47. (*Mr. Hindmarch.*) The sums are all recovered in the shape of stamp duties, are they not?—Yes; everything is paid in stamps.

48. (*Chairman.*) The Patent Office publications are distributed, I think, to the various towns and foreign Governments, are they not?—Yes; nearly 200 out of 250 sets printed.

49. (*Mr. Hindmarch.*) Those which are sent to foreign Governments, I believe, are in exchange for copies of foreign Patents which are sent here?—They furnish what Specifications they themselves print, and send us a weekly list of the Patents which they grant.

50. (*Chairman.*) Is it to your office that an inventor comes, either personally, or through an agent, to take out a Provisional Specification?—An inventor may leave his own Provisional Specification, or may employ an agent.

51. But is it to your office that he comes?—Yes, it is not to my Department, but it is to another Department of the same office.

52. (*Mr. Hindmarch.*) Of the Patent Office?—Yes.

53. (*Mr. Fairbairn.*) Are they not generally taken out through an agent?—Yes, generally.

54. (*Chairman.*) And that Provisional Specification gives the inventor protection for a period of six months, does it not?—Yes.

55. At the expiration of that period, if no further step is taken, his protection ceases?—Yes, if he does not file a final Specification.

56. Can you state what is the mode of proceeding usually gone through in these cases?—The inventor usually employs a Patent agent to take out his Patent, the agent usually prepares for him his Provisional Specification and makes his drawings, if any

are required, and also prepares the final Specification for him at the termination of the six months.

57. (*Mr. Hindmarch.*) The first proceeding, I understand, is to lodge a petition accompanied by a solemn declaration and a Provisional Specification?—Yes.

58. That is lodged at your office?—It is.

59. You then send it to the Attorney General, in order to see whether it has complied with the provisions of the Act of Parliament requiring a proper Provisional Specification?—Yes.

60. The next stage, if I understand rightly, is that you get from the Attorney General his certificate that the Act has been complied with?—Yes.

61. You then advertise in the Gazette?—We then advertise in the Gazette.

62. Then within a definite time after that the party seeking to have a Patent, comes and gives a notice of his intention to proceed with his application?—Yes.

63. A fortnight, I think, must elapse before the next step can be taken, which is an application to have a Patent?—Twenty-one days must elapse.

64. And when the party comes to apply for a Patent, it may possibly go to the Attorney General to consider whether a Patent ought to issue or not if there be an opposition?—Yes. It goes to the law officer in any case, whether it be opposed or not.

65. If he reports in favour of the grant of a Patent, you prepare it in your office, and it goes to the Chancellor to be sealed?—Yes.

66. That is a correct statement of the mode of procedure?—I believe that it is quite correct.

67. (*Vice-Chancellor Wood.*) Are fees paid at those different stages; does the party pay a fee when he lodges his petition and his Provisional Specification?—There is a fee paid at the first stage, but I do not exactly know what other fees are paid.

68. (*Chairman.*) I think I have heard it stated, that the first cost of taking out a Patent, irrespective of any payment which may be made to the Patent agent, amounts to about 25*l.*; is that so or not?—Yes, I think that that is the sum.

69. Not including any payment which may be made to the agent?—Not including any payment which may be made to the agent.

70. (*Sir W. Erle.*) Is there a payment to the Law Officers of the Crown, the Attorney or Solicitor General?—Yes, on each Patent.

71. At the stage when the application which you have described is made?—Yes.

72. (*Mr. Hindmarch.*) If I understood rightly there are two offices, namely, the Patent Office and the Office of the Commissioners?—There are two divisions of the Commissioners' office, the Patent division and the Specification division.

73. (*Chairman.*) You have stated that you think that the number of Patents taken out has been reduced by persons studying the earlier Specifications, and finding that they have been anticipated?—I think that, to a large extent, that has been the case.

74. (*Mr. Grove.*) What was the immediate increase upon the passing of the Act. You say that now the number of Patents is about 3,000 a-year, and that it keeps pretty nearly uniform. I suppose that, in the first year after the passing of the Act, there were not so many Patents as that, and that the number rose to 3,000?—In the first year there were more than there are at present. Inventors postponed their applications for a year in order to have Patents at a cheap price.

75. I dare say that you can give us a tabular statement of the number of Patents from the year 1852 annually?—Yes; I can do that, and showing how many fall off and at what stages they fall off.

76. (*Chairman.*) On the whole, then, you do not consider that the number of Patents is increasing at present; you think that it has reached a number which it does not seem likely to exceed?—I do not know to what it is attributable, but this year there

have been a few more Patents; whether or not it is owing to the stagnation of trade and people having nothing to do but to invent, I do not know.

77. (*Vice-Chancellor Wood.*) The Exhibition may have stimulated them a little?—It may; there has been no gradual increase from the first.

78. (*Mr. Fairbairn.*) There has been no considerable increase of *bonâ fide* Patents compared with the old law?—No.

79. (*Chairman.*) Probably you have no data upon which you could come to any conclusion whether a further reduction of the expense of Patents would tend to increase the number of them?—I think that it would increase the number of them.

80. Then you think that, moderate as the first charges now are, there are still a considerable number of persons who would take out Patents, but who are prevented by those charges?—I think that there are.

81. (*Vice-Chancellor Wood.*) You do not keep a distinct entry, I suppose, of whether the inventions are the parties' own discovery, or whether they are imported from abroad; there is no index, I suppose, distinctly showing that?—Yes; we have such an index; under the new law we can see how many came from abroad. I have a table made out from the first of how many have come from America, how many from France, and how many from every other country; I have it tabulated very accurately; and also how many from every county, and how many from each town.

82. (*Mr. Fairbairn.*) Have you formed any opinion with reference to the working of the present law as compared with the old law as regards Patents?—No.

83. (*Sir W. Erle.*) You say that more Patents would probably be taken out if the charges were less. Have you any reason to think that any Patent, which is of interest and value to the public, fails from the inventor not being able to pay the fees?—I cannot answer that question. Wherever Patents are the cheapest, they are the most numerous, such as in America.

84. (*Chairman.*) As I understand, the forms which are necessary to be gone through in order to take out a Patent, are not within your department?—The Patents are not taken out in my department.

85. (*Vice-Chancellor Wood.*) Are there a great many Disclaimers?—Not a very large number considering the large number of Patents taken out. I can furnish the exact number of Disclaimers.

86. (*Mr. Fairbairn.*) I think you stated that a great many of the Patents went to the second payment?—Yes.

87. And that after that they were dropped?—Yes; there is a falling off at every stage.

88. (*Mr. Grove.*) Do you know anything as to the number of Caveats?—There is not a large number of oppositions.

89. (*Mr. Fairbairn.*) Do you think that any investigation of the claims of an inventor is necessary. In your opinion would it diminish or increase the number of Patents, provided that invention was carefully investigated and considered by a proper tribunal?—I think that it would diminish them.

90. Do you think that that course would be advantageous. It would do away with a great number of frivolous and useless Patents?—Yes, but it would be a very difficult machine to work. The Americans pay about 23,000*l.* a year for preliminary examination, and they are very much dissatisfied with it.

91. (*Chairman.*) They have a regular tribunal of inquiry, have they not, into every Patent before a Patent is granted?—Yes, it costs them much more than our printing and publishing, and circulating the information, costs.

92. Are you sufficiently acquainted with the working of their system to say by whom the inquiry is conducted, whether by scientific men or by judges?—By scientific men.

93. (*Mr. Fairbairn.*) Is their decision final with regard to it?—Their decision is final.

94. (*Chairman.*) Do they decide only whether the

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invention is or is not new, or do they also decide the question whether it is of sufficient value to deserve a Patent?—They decide both as to whether it is new and as to whether it is of sufficient value.

95. (*Mr. Hindmarch.*) Have you in your office any copies of the various Foreign Laws relating to the granting of Patents?—We have a copy of every Foreign Law translated and printed in our Journal.

96. And also of the laws which are enforced for that purpose in our several Colonies?—We have a printed copy of each Law which has been passed in the Colonies.

97. I think that several of our Colonies have adopted laws peculiar to themselves for that purpose?—I should think that one half of them have done so.

98. You have spoken of a library. I understand that that is free to all persons who may go to consult the books which are in it?—It is free to every person.

99. Have you considered whether it is a desirable thing to extend that library for the benefit of the public in any way?—I think it most desirable.

100. It is, I believe, a very small space?—The building in which the books are is very small, and confined, and dark; it is very unsuited for the purpose to which it is applied.

101. Do those books belong to the public, or are a great many of them, on the contrary, your own private property?—A large number of them were my own private property; but they were bought by the Commissioners of Patents.

102. Have you given your attention to the expediency of having some building or receptacle set apart for the reception of models of important inventions?—We have for this purpose the "Patent Museum" at South Kensington. I was appointed superintendent of this Museum in December 1856; and it was opened to the public in June 1857. At first the collection consisted wholly of my own models, which I brought to the Patent Office in 1854; but since the transfer of those models to Kensington, great numbers of models and machines have been received from other persons. The Gallery of Portraits of Inventors, now included in the Patent Museum, was commenced by myself at the Patent Office in 1853, with my own collection of pictures.

103. Do you think that that Museum at South Kensington is sufficient for all purposes?—No; it is most insufficient.

104. (*Mr. Fairbairn.*) You wish to have it much enlarged?—Yes.

105. (*Mr. Hindmarch.*) For instance, when a person obtains a Patent in America, is not he at liberty to deposit in the office a model of his invention?—He is bound to do so.

106. Which model may be referred to from time to time, when a litigation arises?—Yes.

107. Have you given your attention to the subject, with a view to consider whether it would be an expedient thing to do that in this country?—I have not; it would require a very large space indeed, and a great many of the inventions may be worthless. I would much rather that there should be a provision in the Act, that any patentee having a Patent granted to him, should, if required, send a model, so as to get real steps in invention, and not colorable ones.

108. (*Chairman.*) Would not those models not only occupy an enormous amount of space, but also after a certain length of time require replacing; and as it would be impossible to come upon the inventors for the repair or replacing of models of old date, would not it be a continual expense falling upon the public?—That would be so with a large number of models, wooden models. I believe that in America they are very glad when a fire burns most of them, that it is a great relief.

109. (*Mr. Grove.*) Have you ever considered the matter in this point of view: taking as an illustration, the model of an improvement in weaving, that model probably would have some reaction going through the whole machine, so that you could hardly give a fair idea without seeing a working model of

the machine. If you give what are frequently exhibited in Courts of Justice, namely, diagram models, or models of a small portion of the invention, it hardly presents to another person a fair idea of the invention?—In some cases it will give you an idea of the whole invention, in others it will not.

110. (*Mr. Hindmarch.*) Take such a thing as a lace machine, which we all know is about the most complicated machinery used in this country, are not the drawings which are ordinarily deposited with the Specifications so very minute, that it is extremely difficult to see what the parts indicated mean. You, yourself, I believe, are well acquainted with that description of machinery?—Yes, I have had Patents myself for looms.

111. Have you not seen very considerable difficulty in making the various drawings sufficiently plain for all persons to understand them?—Yes, but that is at the patentee's risk.

112. But the public are interested?—It would be well if the drawings sometimes were larger and clearer.

113. (*Chairman.*) Your objection to a compulsory depositing of models comes to this—that they would occupy an enormous space—that they would require to be repaired or replaced from time to time at the public cost, and that after all they might, in many cases, give a very imperfect idea of the things which they were intended to represent?—I think so. I should not like to see the office clogged with a model of every machine which is patented.

114. (*Mr. Grove.*) And it would add very considerably to the expense of Patents?—Very considerably.

115. (*Vice-Chancellor Wood.*) With reference to the power of requiring a model, would you give that power simply with the view of ascertaining the reality and novelty of the invention, as regards granting the Patent, or also, with the view of preserving evidence of it for the future, or both?—My view would be to take the great steps of invention, such as the steps made by Lewis Paul, Arkwright, Crompton, and Robeats, in spinning, and by Kay and Cartwright in weaving.

116. Those are great and important inventions?—Yes. Then the next great and important improvement was that of a Mr. Heilmann, a Frenchman, who invented a machine for combing wool instead of carding it. Models of such machines are immensely valuable.

117. Then you would not do it with a view to evidence between parties in litigation?—They would answer that purpose as well.

118. If that be intended, would it not be necessary to have a very careful officer, and great watchfulness over the models, so as to take great care against alterations, or tampering with the models?—Yes; I think that photography would now almost secure against tampering with a model.

119. (*Mr. Hindmarch.*) You think that parties might be required to deposit in the office for public use enlarged drawings, which would show the sort of thing more clearly?—Yes.

120. You consider that to be important?—I clearly consider it to be important that the Specification should disclose the nature of the invention.

121. (*Vice-Chancellor Wood.*) You have said that you think it desirable that a model should be sent to the office if required?—Yes.

122. Can you suggest from your experience in the office any other alteration or improvement in the office which you would think desirable. I mean requiring the assistance of the Legislature?—I think that if there was a simple mode of quashing bad Patents it would be a great improvement. I think that that is a most important thing. The system of preliminary examination has been tried and found wanting. It is in operation in Prussia, but does not give satisfaction. It was tried in France, Austria, Sardinia, and Belgium, but, being most unsatisfactory, was abandoned in each country. It is now going on in America

at an enormous expense, and the Chief Commissioner wrote me to say that it was a very inadequate system, and a very unfair one, that a man's Patent might be knocked on the head the next day.

123. (*Chairman.*) You say that in France the system of preliminary inquiry has been tried and abandoned?—Yes, that is my impression.

124. Do you recollect for how many years it was worked?—I do not know.

125. Or under what circumstances?—It would be with a view of sifting out good inventions from bad.

126. It was a scientific tribunal?—Yes.

127. It was the same in Prussia?—It is the same in Prussia.

128. (*Mr. Fairbairn.*) Is it only the Americans who now adopt it?—Both Prussia and Russia also; but the inventors and authorities in each country are much dissatisfied with it.

129. (*Chairman.*) Others having tried it and given it up?—Yes, the Commissioner of Patents in America wrote to me to say that it was a very cumbersome, unsatisfactory, and unfair mode—it was Mr. Justice Mason—he was Commissioner at that time, and I have his letter.

130. (*Mr. Grove.*) For the preliminary investigation in America, is it *ex parte*, namely upon the representation of the patentee alone, or is any provision made for advertising or giving notice to the particular branch of trade or manufacture with which the Patent is concerned, so that they may in the first instance, so to speak, show cause against the Patent?—I do not know how that is.

131. You think that an easier mode of quashing Patents would be desirable; how would you distinguish between the difficulties which would apply to the old preliminary investigation and the difficulties which would apply to a preliminary quashing; that is to say, the getting rid of bad Patents by a somewhat more summary mode?—There are a great many Patents which I may call still-born, and nobody takes any notice of them; you would have a coroner's inquest sitting upon still-born children; but in the other cases it is only where there is a mischievous Patent, a bad Patent, where a man forces what belongs to the public upon the public again! the public detect it very soon, and it can be put all right. A *scire facias* is a very expensive round-about process. If an invention has been clearly published and given to the public, I think that it belongs to the public, if it can be shown that it has been published in an English book before; I can recollect cases of that sort.

132. (*Chairman.*) Supposing that a Patent has been taken out, and that for three, four, or five years it has been allowed to remain a dead letter, and no step has been taken to introduce the invention for which it was taken out, do you think it would be fair that at the end of the time the Patent should cease to exist on the ground that no use had been made of it?—I think not; many inventors cannot get their Patents into operation until almost the end of their term; there is such a difficulty in getting the public to take them.

133. (*Mr. Hindmarch.*) Is it not the practice in France that the patentee is bound to have the machine in use within two years or some other definite time after the grant of the Patent?—Yes.

134. Is it so in Prussia likewise?—Yes.

135. And in Belgium?—Yes; it must be in public use.

136. The patentee must have one of the machines at work in the country before the end of two years?—Yes. That is a very unfair law. If an Englishman takes out a Patent in one of those countries for a steam-engine, he must carry a steam-engine over and have it at work.

137. (*Mr. Fairbairn.*) Are there not a great number of inventions which require many years before they can be brought to perfection or to anything like practical utility?—Yes, I may mention the extraordinary invention for wool combing instead of card-

ing. From a fleece of wool you can separate the fibres and take all those of equal length from the longest to the shortest and lay them side by side separately. It is a very curious machine. The poor man who invented it died deeply in debt, and he had been labouring, to my knowledge, for 12 years; it was only during the last few years of his Patent that he could get it to work.

138. (*Mr. Grove.*) The best patented inventions are frequently those which come latest into use?—Yes. The poor man in the instance which I have named had struggled and lost a large sum of money by it.

139. Has it ever occurred to your mind whether the law, as it at present exists, that all Patents are granted for an absolute fixed term, namely 14 years at the option of the patentee, should be continued, or whether there should be a tribunal, if one could be found fit to do so, or the Attorney and Solicitor General, if there were no other tribunal, to apportion the length of the Patent to the nature of the invention. For instance, supposing it were a Patent for giving a little improvement to a solar lamp, or something of that sort, you might give a smaller term to it, whereas if it were an invention, such as an improvement in smelting iron, you might give a longer term. Have you ever turned your mind to that point?—I think there is a great difficulty in that. It is only where it can be shown that there has been great labour and a loss of money or no profit that a prolongation is given.

140. I am applying it to a contraction rather than a prolongation?—The patentees would all be struggling for a long period.

141. I put that question with reference to the statement of the difference of degree in which reward comes. For a minor invention, which can be easily applied, the patentee generally gets his reward rapidly, say a little cover put on to a solar lamp; everybody can buy it for 1s. or 2s. 6d., and the patentee gets his reward rapidly; whereas if persons are obliged to alter their factories there is no chance of the patentee getting his reward for 14 years?—You could not well judge whether the invention would take at all, I think.

142. (*Chairman.*) Do you not think that to establish a distinction of that kind would be to give a very large discretionary, not to say arbitrary power to the Executive?—Very much so indeed.

143. (*Vice-Chancellor Wood.*) What would be your view of the mode of improving the jurisdiction for quashing Patents? What sort of course would you recommend? A simple application by motion to one of the Courts?—Yes, a simple application by motion.

144. At whose instance?—At the instance of anyone of the public.

145. (*Mr. Grove.*) How would you prevent its becoming, in fact, a *scire facias* action, supposing the patentee shows cause, and is prepared with a large purse and many scientific witnesses to meet that application?—I am not a lawyer.

146. (*Vice-Chancellor Wood.*) You think that the mode of proceeding should be cheap and easy?—It should be cheap and expeditious. I know of existing Patents which are but old inventions, as old as the hills.

147. (*Chairman.*) Have you any means of judging to what extent Patents are taken out by the inventors themselves, and to what extent the inventions have passed into other hands before the Patents are taken out?—I think that the great majority of Patents are taken out by the inventors themselves. I do not think that there is much fraud.

148. (*Mr. Grove.*) You are speaking of English Patents, and not of imported Patents?—Yes.

149. (*Chairman.*) I was not putting the question with regard to fraud, but I was asking whether, according to your judgment, it often happens that an inventor sells his interest in the invention to some one who has more capital, and that that person takes

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out a Patent for it?—I think that the inventor could not sell his invention before he got a Patent; that no one would buy it.

150. (*Sir W. Erle.*) Is not it often the case, that he takes out the Patent in his own name and immediately sells it?—Yes.

151. (*Chairman.*) I gather from what you have stated, that you are in favour of an extended museum and a larger office?—Very much so.

152. Also that you object to any collection of models upon a large scale, or at least think it unimportant?—I think it unimportant. Selected models are what is wanted in the country; I may give an instance of the steam engines which we have collected at the Patent Museum. We have Patrick Miller's small engine which drove a boat successfully in the year 1788; then we have the first engine which drove a boat for hire in Europe—that is Bell's "Comet," in 1812; then we have a model, by Trevithick, of the earliest English locomotive engine, and also the first locomotive engine which ran with wheels having smooth tires. Then we have Stephenson's "Rocket" which opened the Liverpool and Manchester Railway, and which was the unfortunate cause of Mr. Huskisson's death. Then we have Newcomen and Cawley's engine, to which James Watt first applied his patent condenser and air pump. We have also the first engine which James Watt made to give circular motion by the sun and planet wheels. These are historical and very valuable instances.

153. (*Mr. Grove.*) Have you any other engine of Newcomen's?—We have only the engine which was at Soho. We have Bramah's first hydraulic press.

154. All this class of models of which you have spoken, as a general rule, I suppose, must be collected some time after the invention, when the invention has become fixed in the history of the trade?—Yes.

155. Therefore it would not apply at all to a con-

The witness withdrew.

Adjourned to Monday next at half-past four o'clock.

Monday, 24th November 1862.

PRESENT :

The Right Hon. LORD STANLEY, M.P.
The Right Hon. SIR WILLIAM ERLE.
SIR W. ATHERTON, Q.C., M.P.
SIR HUGH CAIRNS, Q.C., M.P.

HORATIO WADDINGTON, Esq.
W. R. GROVE, Esq., Q.C.
W. M. HINDMARCH, Esq., Q.C.

THE RIGHT HON. LORD STANLEY IN THE CHAIR.

WILLIAM CARPMAEL, Esq., examined.

W. Carpmael,
Esq.

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163. (*Chairman.*) You are, as I need hardly ask you, a Patent agent?—I am.

164. You have been so, I think, for a considerable number of years?—40 years.

165. Then we may assume that you have had considerable experience in the working both of the present law, and of that which preceded it?—I have.

166. Can you describe to us the process through which an inventor goes under the present law, when intending to take out a Patent?—Supposing he goes to an agent; the agent's duty is, if he is well informed, to advise the inventor, as far as he can, of the novelty and the probable working out of his invention, and to prepare what is called the Provisional Specification. If the inventor does not go to an agent, he prepares that document himself. Then that document, whether prepared by the agent or by the inventor, is deposited, with a petition, with the Commissioners of Patents.

167. (*Mr. Hindmarch.*) And a solemn declaration?—Together with a solemn declaration that he is, according to the best of his knowledge, the first and true inventor.

168. (*Chairman.*) That Provisional Specification

temporaneous model collection?—No, these are historical models.

156. (*Chairman.*) I further gather from what you have stated that you think that anything in the nature of a preliminary inquiry into Patents beyond what is at present instituted would be inexpedient?—A very expensive, cumbrous, and unsatisfactory machinery.

157. But that you think some simple mode is wanted of doing away with Patents which are of no value?—Yes; and some inventions which are of value, and which are patented, belong to the public, and not to the patentee.

158. I suppose you have not given much consideration to the subject of the manner in which actions and suits instituted by patentees should be tried?—I have not; I have been unfortunately a patentee myself, and I have been in the Courts of Chancery and law, until I got very sick of it.

159. (*Vice-Chancellor Wood.*) Do you think that the system of allowing a patentee to disclaim has worked well or ill?—In some cases it works well, and in others it allows a man to enlarge his Specification.

160. Then on the whole you do not object to it?—No.

161. (*Mr. Grove.*) Is it the case in your judgment that at present patentees draw as it were their Specifications with a view to disclaiming, if occasion shall so require it?—I think that they sometimes claim more than is in the original Specification. I think that that is a fraud.

162. The Courts would deal with that; but what I was more adverting to was the question of practice, whether they put in a great variety of claims with the intention, if necessary, of electing which of their claims they will retain when they find out how the thing works?—I do not think they do that; I think they draw their Specifications at first, claiming as much as they can.

ought to contain as full a description of the invention as can be put upon paper?—As exact a description of the essential features of the invention as can be given. The manner of carrying out and performing the invention is to be given in the subsequent or Complete Specification.

169. Then am I to understand you that the Provisional Specification only states in general terms the object of the invention, and the manner in which it is proposed to effect that object?—I would rather say not in general terms, as regards that which is the essence of the invention, that is in precise terms; anything which goes to its being carried out is in general terms. Then the Complete Specification specifically and exactly points out the manner of performing the invention.

170. (*Mr. Hindmarch.*) The statute, I believe, says that the Provisional Specification is to describe the nature of the invention?—That is so.

171. And that the Complete Specification is to describe both the nature and the manner of performing it?—Exactly so.

172. (*Chairman.*) I presume that in the great majority of cases, Patents are taken out through the

medium of an agent, and not by the inventor unassisted?—In modern times a large number are taken out by persons unassisted by agents.

173. Do you suppose that the majority are so taken out?—I am not able to say; they will be able to inform you at the Commissioners' Office.

174. That part of the process being gone through, what is the next step?—The next step is, within four months of the commencement, to give notice that the Patent is to proceed. Thereupon the Commissioners advertise it for any parties to come in and oppose within 21 days. They advertise it in the Gazette and the Commissioners of Patents' Journal.

175. (*Mr. Waddington.*) Not in the newspaper?—In no other paper.

176. (*Mr. Hindmarch.*) I think that the Chairman wished to know what took place before you gave notice. Is there not some proceeding with reference to the Attorney General?—The documents are referred by the Commissioners to one of the Law Officers of the Crown immediately upon their receiving them, and if the Law Officer, having examined the Specification, approves and is satisfied with the description of the invention, he grants provisional protection. If, on the other hand, he is not satisfied with the document he requires certain additions or alterations to satisfy his mind that the party has given a full and proper statement within the law requiring the nature of the invention to be fully stated.

177. Is not the grant of that provisional protection advertised?—Yes, immediately, and that precedes the calling for opposition.

178. It precedes the notice to proceed?—It does.

179. (*Sir H. Cairns.*) You have had considerable experience of the course taken by the successive Law Officers at this stage of the matter. What is the amount of inquiry which, according to your experience, is generally made at that stage. I will first ask you with regard to the novelty of the invention; an inventor comes into the Patent Office, and the Patent Office submits to the Law Officer three documents, as I understand, first a petition, which will tell nothing, I suppose, but the title of the invention?—Nothing else.

180. Secondly, a Provisional Specification, which will describe the nature of the invention?—Yes.

181. And, thirdly, a solemn declaration that he is the first and true inventor?—Yes.

182. Those are the documents which go before the Law Officer?—They are.

183. Does the Law Officer in practice engage in any investigation as to the novelty?—None, so far as I am informed. I have no reason to believe that he does so at all.

184. Has he any means of doing so?—I should say not.

185. Then what do you consider in practice to be the investigation or the examination which the Law Officer conducts?—The investigation of the Law Officer is with reference to the sufficiency of the Provisional Specification to satisfy his mind that that which the inventor seeks to be patented is fully and fairly described in that document; and the Law Officers, I very often find, require further information than that document contains, or some explanation of what it contains; thus showing that they master each document which comes before them.

186. (*Chairman.*) If I understand you rightly, the Law Officer does not consider it his duty to look beyond the Specification itself?—No, certainly not.

187. (*Sir H. Cairns.*) But I suppose he requires that there should be stated on those papers something which professes to be an invention?—Yes, and that it should be described with clearness.

188. Assuming it to be new, the paper describes it in a way which can be understood?—Yes, and the Letters Patent set out that as it is at the risk of the patentee, whether it is new and useful or not, the Patent is granted.

189. (*Mr. Grove.*) That is in the report, not in the Letters Patent?—It is in one of the documents.

190. (*Sir H. Cairns.*) In practice, do you find these papers which are transmitted to the Law Officer frequently sent back for amendment or reconsideration?—Personally, I find very few sent back; but we have a large number brought to us, more particularly by parties who have gone by themselves to the Commissioners, and where the Attorney General or the Solicitor General has not been satisfied with the document, then the parties not seeing their way clear, very commonly come to an agent to ask him to put their Provisional Specification into a proper form for them; I hear from different parties that a great many of these documents are sent back for further and better particulars.

191. (*Mr. Waddington.*) The object of the Law Officers is to see that the document is clear and intelligible?—Yes, that is the main object, I imagine; I can only judge from the result. I see that the Law Officers must have gone very thoroughly into the documents from the objections they raise.

192. (*Sir W. Erle.*) Has the Law Officer a comparison of the Complete Specification with the Provisional Specification?—No.

193. That is no part of his duty?—It is not.

194. (*Mr. Hindmarch.*) He has nothing to do after the Patent is sealed?—After the Patent is sealed his occupation is gone.

195. (*Mr. Attorney General.*) I think that the Act of Parliament prescribes the duty of the Law Officer, does it not?—Very exactly.

196. And in practice, I believe, (and it has been so I suppose during all the time that you have known the intervention of the Law Officers,) they always require an intelligible description of the invention, and also an intelligible description of some means of effectuating it?—The latter is general, the former is special. The nature of the invention is required to be very specific, and general information is required as to the practice.

197. (*Chairman.*) After the Provisional Specification has passed through the hands of the Law Officer what is the next step to be taken?—Notice is given by the petitioner or his agent that the Patent is to proceed; thereupon, as I stated just now, the Commissioners advertise, requiring all parties having any opposition to make to come in within 21 days; and the 21 days having expired if there be any opposition, which is made by leaving notice of objections at the office of the Commissioners, the papers and documents are again referred to the Attorney or Solicitor General, and he calls the parties before him and hears their respective cases and decides upon their merits.

198. (*Mr. Hindmarch.*) Is not there a fee payable upon the lodging of the petition?—Yes, there is a stamp duty of 5*l.*

199. And when you give notice to proceed, there is another stamp duty?—There is then another stamp duty of 5*l.*

200. (*Sir H. Cairns.*) Can you tell me, in your experience, how many, or what kind of proportion of applications to the Law Officer for Patents have been refused or sent back for explanations, which could not be given?—I am not able to do that, but they will be able to do so at the Commissioner's Office, because they keep a record of all those cases. Mr. Ruscoe will be able to give you every information upon that point.

201. (*Chairman.*) Up to this stage, as I understand you, the total official expenses are only 10*l.*?—The official stamps are 10*l.*

202. And there is no other charge in which the public is concerned?—No other charge.

203. (*Sir H. Cairns.*) What is the process of hearing before the Law Officer, upon an opposition being put in?—The ordinary process is, that the Law Officer sees both the parties separately, and decides between them; but in some cases, where fraud or a stealing of some man's invention by another, or

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anything of that kind, has come out upon solemn declarations, it very commonly happens that both parties go before the Law Officer at the same time and the question is heard and argued before him.

204. What is the reason why, in ordinary cases, the parties are heard separately?—Because the Provisional Specification is supposed to be, and is, in fact, for the first six months a secret document, and it has been so held in a Court of Law, and for that reason the opponent is not to hear or know what the contents of that document are. Parties coming in and to oppose, do so upon any invention which they may possess, without having a previous knowledge of the invention the applicant possesses. This in my opinion is a very proper course.

205. Then is the course this: that the Law Officer has in his hand the Provisional Specification, which you say is a secret document, and that the opposing party comes and makes his objection, and states the nature of his rival invention, or as the case may be, and that the Law Officer compares what is so stated to him with what he finds in the Provisional Specification?—That is so.

206. (*Chairman.*) Then, if there are two parties claiming an almost identical invention, so far as appears from the Provisional Specification, am I to understand you, that the Law Officer tries the case between these two parties judicially?—Yes.

207. Are the proceedings in that case conducted in public?—No.

208. It is a private hearing?—It is a private hearing.

209. But agents are admitted?—Agents are admitted on both sides, and counsel also; there are sometimes counsel on both sides.

210. (*Sir H. Cairns.*) But each side is heard by itself?—Each side is heard by itself; but in some cases the proceedings, previously to coming before the Law Officer, are brought out upon declarations by the parties, so that both parties are then known to possess a knowledge of the whole of the invention.

211. (*Chairman.*) Then, as I understand you, it rests with the Law Officer to decide whether the parties shall be heard separately, and, therefore, whether the Provisional Specification of the one shall be kept a secret from the other, or whether they shall be heard together, in which case each of them must necessarily become acquainted with the invention claimed by the other?—That is so. The ordinary practice is to hear them separately; there are cases where they are heard together.

212. (*Mr. Attorney General.*) Is it not rather that the Law Officer hears them separately, unless, as I think you previously stated, the documents before him show to him that the nature of the new invention as it is called has become known to the opponent?—It is so.

213. Where he has no reason to suppose that that is the case, he hears them separately, because if he were to admit the opponent he could not hear them effectually without the nature of the new invention for which the Patent was applied for being fully disclosed to the opponent, which would be a violation of the secrecy to which you have referred?—That is so.

214. (*Sir H. Cairns.*) Does the Law Officer take evidence?—He takes evidence sometimes in addition to that which he has upon declaration. It is mostly upon declaration; but I have known Law Officers to have the two inventors separately before him, in order to ask them various questions without the one knowing what questions he asks the other, so as to arrive at a conclusion as to the real merits of the case. Sometimes he asks them questions before each other, and has them cross-examined before him.

215. Can he administer an oath?—I believe not; I have never heard of one being administered.

216. You have spoken of declarations; do you mean declarations or affidavits?—By the statute it is obliged to be by declaration; all matters in relation to Patents before the Attorney and Solicitor-General must be upon statutory declarations; the

statute itself directs that it shall be so. I do not mean the Patent Law Act, but the Act which enacts that declarations shall be used in lieu of affidavits.

217. (*Mr. Hindmarch.*) You refer to the Act of the 6th and 7th of William the Fourth?—Yes.

218. (*Sir H. Cairns.*) You have said that the Provisional Specification is a secret document; you are probably aware that there is a statute (not the Patent Law) which enables the Commissioners of Patents to publish the Provisional Specification?—There is, but they have never acted upon it; but on the contrary upon the Commissioners looking into the subject, they found that the effect would be so seriously against the inventor if they published those Specifications at an earlier period, that they determined that it was better for them to stand over for the six months. I was consulted amongst others with reference to the consequences which would flow from an early publication of the Provisional Specification.

219. (*Mr. Hindmarch.*) I believe that that was in the time of Sir Alexander Cockburn being Attorney General?—I think it was; I think that you were present at a discussion with reference to the consequences which would follow.

220. (*Sir W. Erle.*) If all that is known is the title of the proposed new Patent, has not an objector a great deal of difficulty in getting at what may be comprised under a very vague title?—The Attorney and Solicitor General now require very clear titles, and the hardship which strikes your Lordship's mind, I think does not exist in fact. An honest inventor sees an advertisement that A. B. is applying for a Patent for improvements in steam engines; he knows nothing of A. B., but he also has an invention for steam engines; he has a right to go in and oppose, and he does so, and opposes upon the invention which he has. But if he knows A. B., then he may know that he has had more or less communications with him, or with somebody that does know A. B., and that he has or may have communicated his invention to him; then that justifies his going and entering an opposition. On the other hand, supposing that a party applies for a Patent, if the party who has, or fancies he has, an invention relating to the same subject could get sight of the Provisional Specification, he could in many cases so shape his opposition as to bring in the identical invention, whereas not having an opportunity of reading that document, whatever he does bring against the petitioner is fairly and honestly his own invention.

221. (*Sir H. Cairns.*) You think that it conduces to truthfulness and to the power of judging of truthfulness that the objector is not fully in possession of what the precise invention suggested by the applicant is?—I think so, as they are both upon the same grounds; the petitioner does not know what the opponent's invention is, they are both honest inventors of improvements in steam engines, and they both tell him what their inventions are. He having heard both very often, says, Gentlemen, your inventions are not at all alike. In other cases he says, there is a likeness between such and such parts, and unless you can agree with reference to those parts, I cannot grant either of you a Patent for those parts.

222. You would put an objector in the situation of the man who is bound to give the marks and description of a lost article before he can claim it?—Yes.

223. (*Mr. Grove.*) Assuming the titles to be rather more particular than they were, still I believe they are very general, such as "Improvements in Steam Engines"?—Yes.

224. Then the difficulty is whether it is sufficiently indicated to parties who might have an opportunity of opposing the Patent at a comparatively small expense, what the nature of the Patent is. There are many manufactures, such as steam engines, weaving looms, and other things, in which a person would be always opposing if he endeavoured to seek out what the particular invention was?—It is not so in practice; the oppositions of modern times are exceedingly few as compared to the applications.

225. (*Mr. Attorney General.*) Is not the opponent very frequently, I might almost say generally, the holder of a Patent?—Very commonly.

226. He comes before the Law Officer with his invention in black and white?—Yes.

227. On the other hand, the alleged invention for which an application is made is in the hands of the Law Officer also in black and white?—Yes.

228. One being printed between blue sheets, and the other being in manuscript?—Yes.

229. Is it the practice, according to your experience, that the Law Officer then compares the two?—Yes.

230. And sees whether really and substantially the one is so far an anticipation of the other, that the other ought not to proceed?—Yes; that is the practice.

231. (*Chairman.*) Does it ever happen that opposition is raised at this stage by manufacturers or other persons who may consider that they would be impeded in their operations by such a Patent being granted for the particular article?—No; I hardly know an instance.

232. That is not the habit?—Not at all; and the present Lord Chancellor (I do not know that the Law Officers of the present day follow the same rule), said that he would not hear an opposition of that kind.

233. (*Sir H. Cairns.*) What was the ground of that statement?—The ground of it was that he considered he was not sitting there to hear whether the public generally would be damaged by the grant of a Patent, but to hear parties who had competing inventions; and that the question before him was whether he ought or ought not to advise the Crown to grant a Patent as between the parties who appeared before him.

234. (*Mr. Waddington.*) Is it common for the Attorney General to refuse to allow an application to proceed on the ground that it is an infringement of an existing Patent?—Many cases of that sort have occurred in the course of my time. Where the inventions have been substantially identical, then the Attorney General absolutely refuses the second patent, and, indeed, upon my own application when I have represented the preceding patentee, I have induced the Law Officer of the Crown to say to the party applying for a Patent, There is no such material change in the thing before me, comparing it with the original Specification, as to justify me in placing you in a position to bring about litigation. On the other hand, the Law Officers have said to me, True it is, there are matters here which will interfere with your Patent if they are worked without your licence, but there are also other matters here which are represented to me to be such important improvements, that it is my duty to grant the Patent, and leave the parties to their remedy.

235. Would the Attorney General grant the Patent if he considered it an arguable case?—If it were merely an arguable case he would hardly do it, but if he felt that there was a separate and distinct invention described, as well as parts of an invention in a previous Patent, he would grant the Patent to the party for that which was new and distinct from the other, leaving the other party to his remedy. There might be something which was an improvement upon a previous Patent.

236. (*The Attorney General.*) Then the Patent would be for an improvement?—Yes.

237. Which improvement involves probably in its working the use of the substance of a former Patent, but has something by way of improvement super-added, the result in law being that the super-addition cannot be used under the former Patent without the consent of, or paying a royalty to the second patentee, as without that there would be an infringement?—Yes. I will take the instance of a case which Chief Justice Erle tried, namely, the celebrated case of *Lister v. Leather*. That was the wool-combing case. Heilman had invented a mode of scaling with wool, so as to take off wool by nippers in detached tufts, and

Lister in his Patent was obliged to use nippers of a like kind, but carried the process so immensely beyond what Heilman had done, that he took out his Patent for his improvements, and it was necessary to disclaim in the Patent of Lister that which was contained in the Patent of Heilman, but he was obliged to use it.

238. (*Mr. Waddington.*) What was the decision in that case?—The decision was that Lister's Patent was upheld as he did not make a claim to, but only used that which he had purchased from another man, namely, Heilman. There was in a previous action a verdict finding that Lister's machine was an infringement of Heilman's Patent, by reason of the nippers. Lister's Patent was granted for that which was in excess of Heilman's.

239. (*Sir H. Cairns.*) Supposing the Attorney General refuses leave to proceed, is there any appeal?—There is no appeal.

240. So that the Law Officer has this to consider, that if he refuses leave to proceed the applicant has no further opportunity of having his case heard, whereas, if he gives leave to proceed and there are objections, there will be other stages and other modes by which a person who objects can have an opportunity of urging his objections?—The Law Officer in giving his decision will very often say, This is a question of such doubt in my mind that as there is a remedy for one party and not a remedy for the other I grant this Patent, though I have some considerable doubts in my mind in doing it. I have had that said by a Law Officer to me. He will therefore always lean to the petitioner, who has no remedy if his application is refused.

241. (*Mr. Waddington.*) It is only in a very clear case that the Law Officer refuses the application of an inventor?—Yes.

242. (*Mr. Grove.*) I suppose you cannot any more than you can upon the other point on which the question was asked tell us how many applications have been refused?—No; I have been in several cases where it has been done, but they are few in number if you take the whole of them.

243. (*Mr. Hindmarch.*) If the Law Officer reports in favour of the petitioner the party opposing has the right of appeal to the Lord Chancellor?—Yes; the petitioner cannot go to the Lord Chancellor if the Law Officer refuses the application; but if the Attorney General reports in favour of the petitioner, and the other party is dissatisfied, then he may by entering a caveat at the Great Seal Office, appeal to the Lord Chancellor.

244. That, I believe, is old practice?—That is old practice, and it has been also modern practice; it is so by statute.

245. (*Chairman.*) What is it that is ascertained by the inquiry before the Law Officer?—He ascertains whether the inventions are alike. If they are not alike, then the party opposing is dismissed. If they are alike, and if it is represented to the Law Officer that there has been any improper action on the part of the petitioner to the prejudice of the opponent, then the Attorney or Solicitor General acting judicially decides as he may think the weight of evidence may lie on one side or the other.

246. If, in the great majority of cases, as I understand from your statement to be the fact, there is no opposition, what security against abuse is gained to the public by the circumstance of this inquiry taking place?—That the grant is made upon an intelligible document—beyond that nothing.

247. That inquiry nevertheless involves two-fifths of the whole expense which is incurred in taking out a Patent?—No, about one-tenth.

248. (*Sir H. Cairns.*) Supposing that when the applicant advertises that he is going to proceed, there is no opposition, nobody entering a caveat; there is no further inquiry?—There is no inquiry.

249. It goes on as a matter of course?—It goes on as a matter of course, and the Patent is granted.

250. So that in an unopposed case, if I may use the expression, the only time when the Law Officer

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takes cognizance of the papers before him is upon the occasion when they are first lodged?—It is so.

251. At that stage the sum of 5*l.* is paid to the general funds of the Patent Office?—Yes.

252. And then upon the second turnpike or stage, when there is a notice to proceed, another 5*l.* is paid to the general fund?—Yes.

253. (*Mr. Waddington.*) You have not told us the fees to the Law Officers?—I have not got them here; I forget all about them now that we do not pay them personally.

254. (*Mr. Grove.*) In looking at the Provisional Specification, do the Law Officers do anything more than judge *ex facie*, that is to say, that upon the face of it, it appears to be a sensible document. Supposing, for instance, it should contain a great blunder in mechanics, they do not go into such a question as that?—The Attorney and Solicitor General's clerks have come (whether upon their own motion or of those whom they represent, I do not know) to ask me for the technical meaning of several expressions, and I have written them down for them; therefore, I imagine, that the Law Officers do look even deeper than that. From time to time I have had the clerks come to ask me the meaning of a paragraph, or the meaning of certain mechanical and chemical terms in processes. I think it is very possible that the Attorney and Solicitor General may have required their clerks to get information as to the nature and meaning of those words.

255. (*Mr. Attorney General.*) Does not the Act of Parliament in dealing with the duties of the Law Officer, in express terms empower him to call in the assistance of persons of skill?—It does.

256. And probably you have known that in intricate cases mechanical or scientific assistance has been frequently resorted to?—Yes, frequently in modern times. I have been often spoken to by the present Lord Chancellor (when Attorney General and by other Law Officers also), with reference to the state of a particular manufacture, and with reference to general information, to enable him to judge of a document; he has not called me in with regard to the document, but he has spoken to me with regard to the present state of the manufacture, to obtain the general knowledge he requires.

257. The Law Officer may resort to what I may call skilled assistance, and is empowered to direct what fee shall be paid for the assistance?—Yes, and he has done so from time to time.

258. (*Mr. Waddington.*) I suppose he is to be satisfied that it is an invention, and that it is likely to be useful to the public?—Yes, he takes the latter for granted: he desires that to be clearly indicated to him, which on the face of it appears to be the description of an invention.

259. (*Sir H. Cairns.*) Have you ever considered the question of whether in practice there could be a satisfactory preliminary examination into all the points which constitute validity in a Patent before the Patent is granted?—I have, and I gave evidence upon that point before a Committee of the House of Lords, I think in 1852.

260. Will you be good enough to state to us your opinion upon that point? At present Patents are taken out, as we understand from your evidence, upon a mere examination of the papers for the purpose of seeing that the invention is there described, and persons who complain of the Patent are left to their remedy afterwards. As an alternative I put to you this proposition, do you consider it desirable that before a Patent is granted there should be a preliminary public investigation into the merits of the invention which is alleged, its novelty, and every other detail with regard to it which would constitute the validity of a Patent when granted?—That would be, in fact, according to my judgment, trying a Patent cause before a man gets his Patent.

261. Be it so. What is your opinion upon that point?—I cannot imagine anything more pernicious

to the progress of invention than that. I cannot imagine its working well.

262. You are aware that it has been very frequently proposed?—I have heard such an investigation proposed, but I never heard the proposition before that it should be a public investigation.

263. When I say "public," I mean, of course, an investigation to which everyone interested in the matter would have access?—I imagine that it would be this; that supposing I was an agent for a Patent, it would be advertised that I was applying for a Patent for such and such things, any parties having objection to it would come down and urge their objections, they having the full power of seeing my Provisional Specification on all points.

264. I have not said anything about the Provisional Specification. Suppose that this is proposed: that before a Patent should be granted there should be a Board of experienced and competent men who should consider whether the invention which is alleged is new, is useful, and is properly described?—The document describing the invention would be a Specification.

265. In your opinion could an investigation of that kind be effectually conducted without publicity; could you effectually tell whether an invention claimed was new or not without publicity, inviting evidence and comments upon it?—I have not ingenuity enough to imagine how it could possibly be carried out, either for the benefit of the public, or for the benefit of inventors.

266. (*Mr. Grove.*) You have stated that there is a certain investigation which takes place, and in a certain sense a judicial investigation; an investigation at which the opponent is heard. Suppose that the Law Officers of the Crown, or any other Board were to make that amount of investigation which should satisfy them that *prima facie* there was a case of merit, entitling the petitioner to a Patent, not precluding the opponent from subsequently litigating the matter, but to inquire into it, so as to see whether it was a matter upon which the Crown ought reasonably to grant a Patent primarily. Have you considered the question in that point of view?—Yes.

267. That would be an extension of what is now done, but it would be on a somewhat larger scale, and so far public that opponents might have an opportunity of being heard, not necessarily finally to destroy the Patent, but to see whether there were any *prima facie* grounds for granting it, the onus of which would be upon the patentee?—Then I can imagine this state of things arising, that if such were the practice, there would be very many cases of trade and individuals in trades constantly opposing so that none but a rich inventor could ever hope to get a Patent against such a phalanx of opposition. I cannot imagine it.

268. (*Mr. Hindmarch.*) Can you see any benefit accruing from such an inquiry?—I do not see it myself, but if a suggested benefit were put to me, any benefit which has been suggested by parties making such a proposal, I should be able at once to give you my opinion of the probability of producing that beneficial result.

269. Would there be any disadvantages arising from it?—As at present advised, I should say that it was all disadvantage, and that there was no possible benefit.

270. So far as the public are concerned, would the public gain anything by it?—On the contrary, I should say that they would lose by it; parties in the particular trade would always oppose the grant of a Patent. I might mention one town, with respect to which it is not too much to say that no invention could ever be applied for without a certain body in that town coming down and opposing it; they would oppose every application, and there would be no chance of an inventor of moderate means ever getting a Patent.

271. And with regard to inventors themselves, I conclude from what you have just said, that they

would not be benefited by any such inquiry?—It would be the very worst thing for an inventor, and for a poor inventor in particular. A man of large means might be able to fight it out: but a man of small means never could.

272. Do you think that any person or persons conducting such an inquiry, could have the requisite amount of knowledge of preceding inventions, and extent of uses, to enable them to come to a right judgment?—I can only say that I do not know of the existence of such persons. There are very few men who have devoted their lives to the inventions which come out day by day in the various manufactures. I believe that I am acquainted with every one of such men, and I know them to be very few who would be able to sit in a Board of that kind and decide such questions. But then, they are all interested from their own professional positions. I cannot imagine your finding men capable of doing it who are so separate from professional occupation as to justify their being put into the judgment seat and still retain their professions.

273. (*Mr. Grove.*) Would you grant a Patent without any restriction for anything which the law now calls an invention or an improvement, provided it be fairly described on the face of the Specification?—Undoubtedly. I believe that that is the least of the evils; that it is better to grant a Patent upon the risk of the inventor as to whether his invention is new and useful than to attempt to investigate his invention, which may never come to anything, and yet if the investigation is made in every case it would cost a great deal of money without a proportionate benefit to the public or to the inventors.

274. (*Chairman.*) Then you see no inconvenience in a multitude of temporary monopolies being created, a very large proportion of which are for inventions of so trifling and so worthless a character that it is not found worth while by the inventors themselves to continue their Patent beyond the first three years?—Forty years experience has shown me that there is no prejudice whatever in granting these Patents. I have no hesitation in giving the most decided opinion as to there being no prejudice to the manufacturer or the public by these Patents being granted.

275. (*Mr. Grove.*) Or to the inventor himself, he being led on by his Patent frequently to an expenditure which turns out to be unavailing, and drawn away from his trade or his occupation?—There is no doubt that a man getting a Patent is very fond of his own child and it will lead him into large expenses, and so it would if there were a preliminary investigation; he would fight to the death rather than lose his child, and he would ruin himself in that early fight, in all probability, quite as fast as he will ruin himself in carrying out a useless invention.

276. (*Sir H. Cairns.*) Which of the two evils would be the greater, that a man who thinks that he has an invention should pay 10*l.* for it and get protection, and then at the end of a couple of years find, from no public notice being taken of it, that it is not as valuable as he supposed; or the other evil, that, believing that he has an invention of value, he should embark at the very outset in a controversy with opponents' trades, as you say, and other persons interested, and expend money in that preliminary contest?—The last would be the greater evil. The first, practically, is a very moderate evil indeed.

277. (*Sir W. Erle.*) How is it that there are large bodies with large funds and great skill ready to contest every Patent unless the Patent is an enormous nuisance to them?—Whenever a Patent is of large value and absorbs a large portion of that particular trade, and manufacturers have to pay a large Patent rent if they wish to use it, they count the cost of paying the Patent rent or fighting the Patent and endeavouring to get it without.

278. That is in the case of a successful and valuable Patent, but there are persons who are ready to fight every Patent?—I have not found it so in practice; that is not so in any branch of manufacture, so far as

I am acquainted. There are occasions where a trade will join together in a common purse to fight an important invention, but I do not know any such instance as your Lordship has suggested.

279. (*Mr. Grove.*) I assume with you that in the case of an important invention which requires royalties from parties they will combine and litigate it, but we are now speaking of the common run of inventions, of which but a comparatively small number are carried further than Patents being applied for. I understand you to say that in certain trades combined bodies oppose every Patent, good, bad, or indifferent?—I said that one town would, were there such a preliminary investigation as to give them any chance of success by so doing, oppose all Patents applied for in relation to the manufacture of that town, because there are certain bodies of men in that town who oppose every Patent, and would always endeavour to upset every Patent, and they publish that fact to the world.

280. (*Mr. Waddington.*) Supposing that a preliminary investigation of this kind were adopted it would be necessary to constitute the tribunal by Act of Parliament, and to define its powers. I apprehend that there is nothing in the present law to provide for it?—There is nothing in the present law which would enable you to do it; it must be by statute in some shape or other.

281. (*Sir H. Cairns.*) I suppose that the great object of a preliminary inquiry, supposing it were thought desirable, would be to ascertain whether the invention was new; is there anything in your opinion which would be made the subject of a preliminary inquiry which would be so important as that?—I do not know of any other matter of the same importance. What I understood on the former occasion, when I was examined before the Committee of the House of Lords, was that parties wished to put it upon the same system as that on which it is now conducted in America and Prussia, but more particularly America. There they do investigate and profess to point out whether the invention is new or not.

282. (*Mr. Waddington.*) What tribunal investigates the matter in America?—The Commissioner of Patents in America has a large staff of what are called examiners at the Patent Office. Every Petition and Specification is handed over to one of these examiners, who examines the Specifications, and also examine, or profess to examine, every Specification, every book and publication that is written upon the subject, and everything that is known, and then having gone through this investigation they report upon each application. When all this is done they do not profess to give you a perfect Patent which is not to be fought hereafter by reason of this previous investigation, on the contrary the Patent is just as open to be fought in a court of law after it has gone through that investigation as if no such investigation had been gone through. The object there is to reject inventions if they do not find them new.

283. (*Sir H. Cairns.*) According to that description of what is done in America, it comes to this, as I understand, they trust to the intelligence and research of some one person, to whom the duty is deputed, to say whether there are prior traces of the inventions in publication?—Yes.

284. It is nothing more than that?—Nothing more; and then if they refuse an application, which they frequently do, there are a series of appeals to the Judges of the Court; and, so far as I am informed, the objections of the examiners are overruled sooner or later if sufficient trouble be taken, and the Patents granted.

285. Does it exhaust the question of novelty to look through publications?—They have the Specifications of this country, of France, and of every other country.

286. Does that exhaust the question of novelty; might there not be a prior user of an invention of which you would not find any trace in publication?—It would not exhaust it at all. The same manufac-

*W. Curpmael,
Esq.*

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W. Carpmael,
Esq.

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ture might be carried on even within 100 yards of the examiner, and he know nothing of it; in fact an examiner could never be informed of all that was being done in the workshops of the country; such preliminary investigations could only be carried on at a large cost to the country, and yet be of no use afterwards in the investigation when the Patents come to be tested in a court of law.

287. (*Chairman.*) When you speak of testing the novelty of an invention, it is no other test of it than that no similar invention appears in the Patent Office?—Or in any of the printed books which they have.

288. It is, of course, impossible to inquire into what is done in every workshop or factory in the country, and to verify the fact that there is no such invention employed?—One of the best and most efficient Commissioners whom they ever had reported to Congress that the examination was cumbersome and inconvenient, and that it entirely failed of any beneficial object; and I believe that it must at all times fail, because we have not at any period that I can remember had men whom you could have put into the office, paying them a reasonable salary, who could have investigated the matter with any value; and, practically, it is only making the public pay for an investigation which every inventor should go through for himself, more particularly now that in most cases he can go into a public office in his own town wherever he happens to live, and read without the payment of any fee every Specification for which a Patent has ever been granted upon any given subject; therefore it is, in fact, asking the public to be diligent for that man who is not diligent for himself.

289. (*Mr. Grove.*) You would grant a Patent for a thing, although it was notorious old to the knowledge of the parties granting the Patent and to all the world. You prefer that as the least of two evils?—That is the least of two evils, so far as my knowledge goes, as no one can be injured by a Patent that is notoriously old.

290. As I understand the working of the matter in America it is this, that if there is any doubt, as the Law Officers of the Crown do here, the patentee has the benefit of it, and it must be litigated hereafter, and that they only refuse where the Patent appears obviously to be something which has been already before the public?—It goes further than that. Patents are frequently refused in America by reason of the mis-information of the examiners, where the inventions have been undoubtedly new, and the parties have, therefore, had to contest them in order to get the Patents granted. Examiners often cannot appreciate the materiality of what appeared to them to be a very small difference between that which exists and that for which a Patent is applied.

291. My question had not reference to the particular working of the thing in that way, but whether the intention or object was to reject only those inventions about which no apparent doubt existed, whether they do it rightly or wrongly is another question?—It is the object, undoubtedly, to reject that which is decidedly old.

292. (*Mr. Waddington.*) For which Patents had been taken out before?—Yes, or which any book on the subject had promulgated to the world before.

293. (*Mr. Hindmarch.*) Mr. Grove put to you the question whether it would be a lesser evil to grant a Patent for a thing notoriously old. According to the practice in this country I believe that a Patent cannot be obtained for anything which is notoriously old if it is brought to the knowledge either of the Law Officers or of the Lord Chancellor?—Certainly not.

294. I believe that in the case of the crane at Hartlepool a Patent was refused because it was notoriously old?—Yes.

295. It becomes a question of degree as to what constitutes a thing notoriously old?—Undoubtedly; but I say that it is better that Patents should be

granted for things which are old rather than that a preliminary investigation should take place, such as Sir H. Cairns has suggested. On the other hand I think that a number of unimportant Patents being granted a small evil compared with a preliminary investigation of each application.

296. (*Chairman.*) You do not, then, conceive that there is any great inconvenience to the public in a multitude of frivolous Patents being granted?—No. I believe sincerely, that there are more parties advised not to take out Patents by parties in the profession than there are those advised to take out Patents. I believe that other professional men do as I do—that, wherever they can advise a party that his invention is old, or that he will not succeed, they advise him not to take out a Patent; and I believe that the larger number of Patents which are taken out which do fail belong to those unfortunate men who, as soon as they have an idea, run to the Patent Office to secure it.

297. Your argument is this, that the good sense and the discretion of the Patent Agent is in itself a considerable check upon the multiplication of useless Patents?—I believe that it is. I know it to be so in my own office, and I think that the Law Officers of the Crown will say that my documents, generally speaking, are such that they have at any rate on their face a probable future.

298. (*Mr. Grove.*) As I understand you, you think that the investigation resulting in the advice of the Patent Agent, which is in fact a preliminary investigation or opinion, is a better mode of getting rid of the bad Patents than any investigation by any board or tribunal?—In place of a better I think that that is the best.

299. (*Sir W. Erle.*) Does not the whole of that exclusion of frivolous Patents depend upon the skill and integrity of the Patent Agent?—Very largely.

300. Assume an unskilful or an unconscientious Patent Agent, a multitude of frivolous Patents would be poured in?—It does not depend primarily upon the Agent, but upon parties who are determined if they can to get a Patent. There is no obstruction which you can put upon certain men which will stop their having Patents if they can by any possibility get them.

301. (*Chairman.*) And I presume that the class of men who are most anxious to take out Patents for inventions which other people do not consider of much value, are just the class of men who would consider themselves most aggrieved and be most likely to make it the subject of complaint if, by the operation of the Law, they were restricted from so doing?—That that is so I will give your Lordship an instance. I had a party introduced to me a day or two back by a gentleman, and I advised him in the most strenuous manner not to take out a Patent. He came a second time and I went through his invention again, and I again advised him that he should not take out a Patent. Last Saturday I received a letter from the gentleman stating, with an apology to me, that the party whom I had so advised not to take out a Patent had gone and taken one out through another Agent. You will very commonly find, that wherever a Patent Agent raises objections or difficulties against a party taking out a Patent, he goes off and gets one himself. Men have such an affection for what they consider a new invention, that nothing will stop them from getting a Patent; they will not investigate, they will not take the ordinary care of a man of business. There are certain classes of inventors, or men who imagine themselves to be inventors, whom you cannot restrain from taking Patents.

302. (*Mr. Waddington.*) Do you consider that, besides the great evil of multiplying these useless Patents, as respects multiplying the records there is a great evil to the public?—I do not think that there is any great evil to the public; the evil is to the parties who are silly enough to incur the expense of them.

303. (*Mr. Grove.*) Do you consider it no evil to a tradesman who has filled his shop with a stock of goods that he should receive a notice from a patentee that it is an infringement of his Patent, giving him the option of either destroying his stock of goods or contesting the matter at very great expense in a Patent action?—That is an evil which you can never get rid of; that does not come of worthless Patents, but, on the contrary, of good Patents.

304. It may come of any Patent which the patentee thinks a good one, or in which he thinks he can succeed?—Undoubtedly it may; but you cannot prevent it by any means when once a man can get a Patent whether it is good or bad.

305. (*Sir H. Cairns.*) The case which Mr. Grove puts is this. Supposing that I have been manufacturing by a particular process for the last 20 years, and that according to that same process I have filled my repositories with a large stock of goods, and that a few weeks ago, without my knowing anything about it, some person has gone and got a Patent for that identical process which I have been following for 20 years past, and that having got that Patent he sends me a solicitor's letter, to inform me that he is the proprietor of that process, and that no person else must use it, and that he understands that I have filled my shop with goods made according to that invention, as he terms it, and that he will commence proceedings against me unless I surrender, or pay him a royalty; is not that an evil?—It is an evil; but it is the same as with any other property. A man may make a claim to it, and you must resist it. You would answer by your solicitor, who would say, "My client has been doing that which he is now doing for 20 years, and therefore he declines taking any notice of your communication."

306. But it might result in a law suit?—It might result in a lawsuit; and if he added, "And you are at liberty to come and see how he has at all times manufactured the article," I do not think that the claimant would proceed with a lawsuit if he had an honest adviser; and if he did, the costs to the manufacturer would be very small indeed if he confined himself to the one sufficient defence—that he had done the same thing long before the date of the Patent.

307. (*Mr. Grove.*) Take the case of frivolous Patents as there are now, such as a Patent for a shirt frill, or for the shape of the rim of a lady's bonnet. Suppose that the Patent is taken out for certain new fashions in bonnets, or in shirts, and that the patentee writes and says, "This is my invention;" it is an invention for a very minute thing, and a considerable sum of money may be thrown away in defending your right to have these shirt frills, or these ladies' bonnets?—I know of no remedy for those sort of things at all.

308. (*Mr. Hindmarch.*) Does not that rather open out this question, whether it is advisable or inadvisable to grant Patents for very minute subjects, because the minuteness of the subject in the question put by Mr. Grove seems to be the chief objection. In your judgment is it at all desirable that Patents for such trivial subjects should be granted?—My opinion is, that in the cases which Mr. Grove has put there is, to begin with, no manufacture, and therefore by the law as it now stands there could not be a valid Patent.

309. In your opinion is it desirable to refuse to grant Patents for subjects merely because they are minute?—On the contrary, some of the minute have been some of the most beautiful, and most valuable to the country and to the inventor. The quantity of invention, or the size or nature of the thing, has nothing to do with its value. An improvement in the formation of a pin or a needle may be one of the greatest importance; the article is small, but the manufacture is enormous.

310. (*Mr. Grove.*) I used the term "frivolous" to avoid that point. I was assuming a frivolous invention, but still an invention which in the existing

state of the law would be the subject of a Patent, of which we have known several so adjudicated, but which would be more perhaps a matter for registration?—Just so.

311. (*Mr. Hindmarch.*) In various Specifications which have been published to the world, even in describing inventions which possibly might be deemed frivolous, have not there been important communications made to the public as to modes of manufacturing which you could not find described in any other way?—Very often, indeed.

312. There are very often modes of manufacturing used by patentees and inventors which you could not find in any book whatever?—Very often.

313. When a man makes his Complete Specification he must describe his invention, and he describes things of that sort?—Very often in making what would be almost called a frivolous thing, a very important process or system of machinery or of mechanical instruments is used which becomes of great value to the public, though it has been applied to what might comparatively be called a frivolous article in the first instance.

314. And in that way have not those Specifications become the vehicle of very important information to the public?—No doubt of it; there are very many cases of that sort.

315. Does it not very often happen that one man in a trade, say the wool manufacture, knows nothing about what is going on in the manufacture of cotton?—Yes.

316. If he happens to see a Specification in an analogous branch of manufacture, he gets information which is very valuable to him?—Yes. That very thing happened in Heilmann's case; he contemplated originally combining cotton and wool, but the adaptation of his ideas to waste silk and flax became a very valuable consequence of his original invention. At present I advise every manufacturer, as part of his library, to have a copy of every Specification that comes out relating to his particular manufacture, and that is one of the greatest benefits of publishing the whole of the Specifications. Manufacturers now come and consult a professional man with a degree of information and knowledge of the real state of their manufactures far beyond anything which they had previously to 1853.

317. (*Chairman.*) Are copies of those Specifications to be obtained cheaply?—Very cheaply indeed. I believe that the rule is merely to charge the cost price with a mere nominal addition. I believe that no profits are made out of the printing; those documents are marvellously cheap.

318. (*Sir H. Cairns.*) They are sent to public libraries?—Yes, and they are sent to nearly all manufacturing and other towns where there is a library open to the public, a mechanics' institute, or any institution where the public are admitted; that is done for the purpose of keeping them before the public.

319. (*Mr. Waddington.*) Does your experience suggest to you any mode of improving the present practice of the investigation by the Law Officers of the Crown up to the point to which we have now gone?—I am not at all prepared to advise anything with regard to improving it. I believe that it works very well; they have the assistance of a very skilful man if they want information in a mechanical or manufacturing point of view, in Mr. Woodcroft, whom they from time to time call in, and I believe that he is a most efficient officer. If the Law Officers want more information than they get from him, they never hesitate, so far as my experience goes, to call in men external of the office, and pay them for any report which they may make to them. That has been the practice, and I at present do not see any way to improve it.

320. (*Sir W. Erle.*) Is it necessary to have such powerful officers as the Attorney and Solicitor General to ascertain whether an inventor has used perspicuous language in his Provisional Specification?

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Esq.
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Esq.

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—I should say that if it only rested upon that it would be putting a steam engine in action to kill a fly, but it goes further than that, the Attorney and Solicitor General acting in behalf of the Crown in these grants, very often have very difficult and very serious matters of right between individuals to decide, and therefore their minds are brought up to the work by the very cultivation which they are constantly getting from the documents which come before them.

321. (*Mr. Attorney General.*) There are questions of Disclaimer and *scire facias* to repeal a Patent and the ordinary question of opposition to which you have adverted?—A great many of the questions are of that class which require the highest ability and a judicial mind to deal with. I have again and again had cases before the Attorney and Solicitor General of the greatest difficulty.

322. (*Mr. Hindmarch.*) And in order to give satisfaction to the various suitors who are seeking Patents and opposing Patents, is it not in your judgment necessary to have an officer of some high character, quite of as high standing as the Attorney and Solicitor General?—I think so. I must confess that having had experience from Sir John Copley (the present Lord Lyndhurst) down to the present time, I am not prepared to suggest, and my experience would go against suggesting any other tribunal to deal with those matters. I do not say that because there happen to be two gentlemen here who have filled the office; on the contrary, I have said it again and again for the last 30 years upon different occasions when I have been called forward to give evidence upon the subject.

323. So far as your experience has gone, has not the operation and management of the Patent business given satisfaction to the public, and all persons interested?—I believe so, most completely; I never heard, from those who really know what the matter is, an objection raised to the efficiency and the completeness with which that business is done, or any objection to the Law Officers being the parties to do it.

324. (*Mr. Waddington.*) Are appeals to the Chancellor numerous?—They are very few indeed; much fewer in modern times than they used to be in olden times. With a far less number of Patents applied for, there used to be a larger number of oppositions, in proportion to the number of Patents applied for, both before the Lord Chancellor and before the other Law Officers. I used to have cases before the Attorney and Solicitor General two or three times a week, when but 400 Patents in a year were applied for; but in modern times, when some 3,000 applications are made, I do not meet them perhaps, once in two, three, four, or five weeks.

325. (*Mr. Hindmarch.*) In your experience is not that very much lessened by the fact of the extensive publication of Patents?—I think that it is.

326. (*Chairman.*) Do you consider that the expense which is at present incurred in taking out a Patent operates as any considerable limitation upon the numbers taken out?—I think not. I think that the first cost now errs on the side of being too small, rather than of being in excess. If I gave an opinion at all with regard to expenses, I must say that I think the second payment of 100*l.* is a tax without justification. The first payment is 50*l.* at the end of the third year; the second payment is a tax of 100*l.* at the seventh year.

327. That is not a second payment, but a third payment?—It may be called a third payment; the early payments are in getting the Patent; but the first payment after getting the Patent is 50*l.* at the third year; the second payment, as I call it, is 100*l.* at the seventh year.

328. We may take it, I think, that irrespective of any fees which may be paid to the Patent Agent, the expense of getting a Patent in the first instance, in an unopposed case, would be about 25*l.* or 30*l.*?—25*l.*, and if it is opposed it would be about 30*l.* The stamp duty in getting a Patent, including the complete specification, is 25*l.*

329. And you consider that the last payment of 100*l.* at the end of seven years is objectionable?—I think that it is objectionable; I think it is unfair as a simple tax put upon the patentee. The object of doing it is to eliminate Patents which cannot afford to pay it.

330. That is to say, to clear the way of a multitude of monopolies, which are of no value to the persons taking them, and which may be an annoyance to the public?—Yes; but the 50*l.* payment has weeded out most of the useless Patents.

331. Do you think that that is a legitimate object of taxation?—My own opinion is that it is hardly a legitimate object; and I have known several cases of valuable and good Patents, or which ought to be good Patents, that have not proved beneficial to the parties up to the seventh year, and it has been that outlay which has become the turning point, namely, whether they should pay that 100*l.* or not. A large number of people think that if a new and good invention is brought out, everybody is ready to use it. Nothing is more fallacious than that opinion. I have known inventions of the highest merit go, after diligent effort to get them into existence, for 12 or 13 years without a shilling of return, and in the fourteenth year they have begun to promise; then the parties go to the Privy Council to ask for a renewal. We have had many cases of that kind, of good and valuable inventions, and I have had, as I say, several instances since the present Law has been in existence where the 100*l.* has been the turning point whether the man should go on with his invention or not. I say that that is an unfair tax in those cases, and that the benefit, on the other hand, of getting rid of the incumbrance of a supposed monopoly is not an equivalent for that state of things.

332. (*Mr. Hindmarch.*) I believe that in some branches of manufacture newly invented it is even necessary to create a new class of workmen?—It is necessary to create a new class of workmen, and to create everything to introduce the work.

333. That necessarily consumes a large portion of time?—Yes, and capital and anxiety.

334. (*Chairman.*) Do you suppose that the abuse which you complain of would be diminished if, instead of requiring the payment of 100*l.* down in one sum, it was spread over a number of years?—I would say that if it is for the purpose merely of a second time weeding out or getting rid of the Patents which really and truly have no virtue in them at all, if a tax of 25*l.*, or any other moderate sum, were imposed, that would do all the duty of clearing off useless Patents, and yet leave an honest and real patentee to fight through the difficulties if he saw his way.

335. Might not this be done, instead of a payment of 50*l.* in one sum, might not there be a payment, say, of 10*l.* for a period of five years, and instead of the final payment being 100*l.*, might it not be a payment of say 20*l.* for five years more?—I have a great objection to annual payments. I have known French Patents to drop out by the mistake of an individual as to the day or as to the hour of paying up the annual taxes, and therefore I would rather have whatever is to be paid to be paid at a time certain, and not by an annual payment. I am always afraid of periodical payments, because I have seen so much evil come of them in France and other countries.

336. On the ground that a mere casual neglect causes a man to lose the benefit for which he is paid?—Yes, the accident of sudden illness in going across the water between here and France, or anything of that kind, or some miscarriage, has caused valuable Patents to be lost, because there is no retrieval.

337. (*Sir Hugh Cairns.*) There are no days of grace?—There are no days of grace. If you introduce periodical payments make a fine for not paying to the day, but do not void the Patent by reason of nonpayment. I do not care what the inventor has to pay or when he pays it, but I must say that the effect of the nonpayment on a given day is a most serious evil under any circumstances.

338. (*Chairman.*) Then your objection is not so much to the payment being demanded as to its being enforced under the penalty of losing the Patent if there is any delay in the payment?—When it comes to so large a fee as 100*l.* I object to it; with a smaller one I should have no objection to its being peremptory to the day.

339. Do you think that the first cost of obtaining Patents is too great?—I think not. I rather think that if it had been put up higher in first cost we should have had less of those Patents which Mr. Grove has referred to, namely, for frivolous matters which we should all be glad to get rid of. I think that we should have less of them if the inventors had to pay more for them. I ventured to predict before the Committee of the House of Lords in 1852 that we should have a large quantity of those Patents, and we have them, and that is by reason of the very cheapness at the outset, but I do not say now go back to a large sum, though I advocated a larger sum in those days. I did not want a very large sum, but I did want to go to a larger sum than that which is now charged.

340. Then the only objection which you have to to the system of payment as now made is that the second and third payments are too high?—The renewal stamp duties, I think, are too high. They are too high for the purpose of simply getting rid of useless Patents, whilst they do injury to parties who are short of money and who are at greater or less cost for working out their inventions.

341. (*Sir H. Cairns.*) Does that observation apply to both payments?—Yes. I should have preferred to have the first payment 25*l.* and the second 25*l.*

342. To reduce the 150*l.* to 50*l.*?—Yes. I see that the patentee now more than pays for the cost of granting his Patent, and I do not think that the inventor should be taxed simply as an inventor. I am not aware of any principle upon which a man should be taxed simply because he has brains.

343. (*Chairman.*) That is to say you think that he should not be taxed, beyond the amount necessary to keep up the Patent Office?—Yes, and all the consequences of it.

344. You, I suppose, would not dispute that the Patent system should be made self-supporting?—Not in the slightest; on the contrary I would go up to the fullest extent, because I think it is for the benefit of the patentee that a considerable sum should at starting be paid for every Patent, otherwise it lets in those insignificant matters which you cannot very readily keep out if the price is so very low.

345. (*Sir H. Cairns.*) You have stated that you do not think that the multiplication of Patents is a great evil. Assuming that individuals should be inconvenienced by Patents, which they consider invalid, do you think that it would be an advantage to have some cheaper and easier mode provided by which they could repeal a Patent or set it aside?—I think that there might be modes of dealing with Patents by which you could call them into question inexpensively; that is to say, less expensively, than by a writ of *scire facias*.

346. With regard to a writ of *scire facias*, is that an expensive remedy?—A very expensive remedy.

347. Supposing it to be successful, what is done with respect to the costs; does the party prosecuting the writ ever get the costs from the unsuccessful party?—If the writ is successful he does not. The Crown does not receive or pay costs. The patentee may get his costs, or a portion of them, because the Attorney General requires a bond from the prosecutor, in order to protect the patentee.

348. That is to say, that if the Patent is maintained the proceedings may be dismissed; but if a member of the public, who wishes to set aside the Patent succeeds in doing so, then he gets no costs?—Then the Crown does not receive costs.

349. It is an expensive process, and the party who puts the Crown in motion, if successful, gets no costs?—Just so; he gets the pleasure of working the

invention with the rest of the public, he being a public prosecutor out of his own purse.

350. (*Mr. Waddington.*) Supposing he fails, does he pay costs?—Yes, substantially, because he gives a bond to the Attorney General.

351. (*Sir H. Cairns.*) In your opinion, would it be desirable that there should be a mode by which a member of the public, who thinks that a Patent is invalid, and feels it to be irksome, should be able at once to bring the question to issue, whether it is valid or not, and if he proves it to be invalid should recover costs from the patentee?—If it were a cheap remedy, I should say that it would be a desirable thing, but at present I do not know of any cheaper remedy than the writ of *scire facias*.

352. There is no cheaper one at present?—But, supposing that you could have a Court to try that question at a reasonable cost both to the prosecutor and to the inventor or patentee, it would be desirable, for the benefit of the public, and also for the benefit of the patentee, because at an early period you would stop him from going to outlays to which he would otherwise be induced to go, under the supposition that he had a valid Patent.

353. (*Mr. Grove.*) You have not, I suppose, thought enough of the subject to suggest any mode by which that object could be cheaply effected?—No, I am not at present prepared to suggest any. The system at the present time of trying Patent causes is so disastrous in its consequences as to money matters that I am frightened at it; it is an increasing quantity every year, and not a diminishing one. I can remember a time when we used to go into Court to try a Patent cause in a comparatively simple way, and there was not half the paraphernalia which there now is. We got through it in the course of a few hours, and people were quite as well or more satisfied than they are now when we are three days or a week in trying a Patent cause.

354. (*Sir H. Cairns.*) What is the reason of the increased time and expense?—That is a very long subject. I shall be very happy to go into it step by step. I think that you must take the writ of *scire facias* as one part of the whole question of trying Patent causes; I cannot at present sever the one from the other. At present I do not see my way to the matter being any different than trying a Patent action.

355. You will be able at some future period to give us or to tell us where we can conveniently find the expense which has been occasioned by different Patent actions?—I shall be able to obtain, if you wish it, a great deal of such information by inquiring of several solicitors with whom I have been engaged in various Patent causes.

355. I did not mean so much particular causes as the litigation upon particular Patents. We know very well and see every day that Patents are the subjects of a great many actions?—I mean upon one simple action.

356. (*Mr. Attorney General.*) Is the expense of the process of *scire facias*, independent of its involving a trial, considerable?—No.

357. Therefore, when you speak of a *scire facias* being expensive, you include the expense of trial?—It is the trial; it is not in getting to issue, but it is after issue is joined where the expense is incurred.

358. Therefore, the proceeding by *scire facias* is expensive in the same way and for the same causes which make the trial of an ordinary Patent cause between A. B. and C. D. expensive?—Precisely.

359. (*Mr. Waddington.*)—Are not proceedings by *scire facias* very rare?—In modern times they are very rare, because the patentee has the reply. Formerly the Crown had the reply, so that up to a very few years ago no Patents ever stood a writ of *scire facias*.

360. (*Mr. Hindmarch.*) You have not yourself been personally connected with taking out the process in the Patent Office?—I have nothing to do with it.

361. You have said that it is not very expensive, but you do not speak from your own knowledge?—

W. Carpmac,
Esq.

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W. Carpmac,
Esq.
24 Nov. 1862.

I can give you one instance where a great deal of money was spent even in the preliminaries because there have been such things as going before the Master of the Rolls to deal with preliminary stages. That cost a great deal of money. Mr. Attorney General put to me whether, ordinarily speaking, getting to issue is a costly matter: I say no.

362. (*Mr. Waddington.*) You do not put the objections to the Patent upon the record, I suppose?—The parties are bound to do so. In *scire facias* they are in the writ itself; they are part of the record; they are obliged to serve them with the writ. In

scire facias they are so to speak part of the declaration; the writ in substance is almost the declaration.

363. (*Mr. Grove.*) There are a good many interlocutory proceedings which occasion some degree of expense, as for instance amending notices of objections, amending particular branches, and matters of that sort?—Yes, both in *scire facias* and in action for infringement. The question is a serious one, and one which requires to be looked into, because it is a growing expense in all Patent trials; every year seems to make them more costly than they were previously.

The witness withdrew.

Adjourned to to-morrow at half-past 4 o'clock.

Tuesday, 16th December 1862.

PRESENT :

The Right Hon. LORD STANLEY, M.P.
The Right Hon. LORD OVERSTONE.
VICE-CHANCELLOR SIR W. PAGE WOOD.
SIR W. ATHERTON, Q.C., M.P.

SIR HUGH CAIRNS, Q.C., M.P.
HORATIO WADDINGTON, Esq.
WILLIAM EDWARD FORSTER, Esq., M.P.
WILLIAM FAIRBAIRN, Esq.

THE RIGHT HON. LORD STANLEY IN THE CHAIR.

WILLIAM CARPMAEL, Esq., further examined.

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364. (*Chairman.*) At your last examination you spoke of the growing expense of Patent trials, and you said that every year seemed to make them more costly than they were previously; will you explain that statement?—I perfectly remember the statement, and I maintain the opinion which I then expressed.

365. Can you explain why they are every year more costly than they were previously?—In order to determine that we ought to begin with the manner in which a Patent action is now brought, and the manner in which it is tried. Formerly there was simply a plea of not guilty, and every objection or defence a defendant could raise could be brought forward under that plea. Now in order to prevent the surprises which occasionally occurred in these trials, it has been required that the defendant should give notice of every objection upon which the Court is to judge of the want of novelty of the invention, or the want of sufficiency of the Specification of the Patent. In addition to that, since 1853 all the Specifications of Patents have been published, and the cost of copies of them is exceedingly small. The Commissioners have also published abstracts of Specifications. In drawing the pleadings the pleaders have these abstracts and indexes of the Patents before them, and they put in to the objections every Specification relating to the subject, this being for them a safe and easy expedient, but it loads the case with much that is foreign to the issues. Then again the Common Law Procedure Act requires that in declaring the plaintiff shall give with his declaration particulars of breaches. Now, unless those particulars of breaches are very specific and pointed to the cause of action it increases the difficulty of the defendant, who has to guard himself as respects every construction which it is possible to put on the Specification. The law of infringement is this: If a Patent be taken out for a system requiring several consecutive operations, or processes, or if it be for a combined machine, and the combination of the whole is new and is that which is patented, the law holds that the validity of the Patent shall be tested on the whole being new and useful; but a party becomes a wrong-doer if he uses any one portion of that system which was new in itself, independently of the combination, so to speak; and therefore if the averment or the statement in the particulars of breaches be general, the defendant may be found guilty of infringing anything which is found in that Specification which was new at the date of that Patent. The defendant, in order to stop out or to eliminate everything which he himself is doing from

being held to be an infringement, gets up a defence consisting partly of Specifications, partly of publications in print, and partly of pre-users by other manufacturers; and therefore the great source in my opinion of the growing cost of Patent actions, and the increased time which they take in trying is the want of point and exactness in the issue which has to be tried between the parties when the case comes into Court. Now in the Courts of Equity we have found that in consequence of the manner of drawing bills of modern time, and the averment in those bills setting out the thing complained of, in a short and clear statement, which is sworn to on the part of the plaintiff, and then on the other side the defendant and his witnesses bringing with point and exactness the matters which they have to offer in defence, and these being again very concise and closely expressed, we get at a far closer issue. Therefore the great thing in my opinion with regard to the statement of the procedure in the Common Law Courts is to devise some mode by which the cause of complaint should be exactly defined. Then having the cause of complaint exactly defined, the defendant would only require to put upon defence one of two things, either that he was not doing that which he was charged with doing, or that the thing had been done before, and he would not place before the Court, as he now does, 10, 20, or 30 Specifications of previous Patents, as well as other publications, directed to many different points. Now the effect of the want of point and exactness in the pleadings is this: As soon as the plaintiff's solicitor gets the notice of objections on the part of the defendant he purchases all those Specifications, and he places them before some party competent to advise as to their contents, and as to their bearing on the Specification and the complaint of the plaintiff. This investigation costs a great deal of money, and it must be done by every scientific or manufacturing witness whom he proposes to call before the Court of Law. Then the plaintiff must have counsel instructed, with heavy briefs and consequently with heavy fees upon those briefs, for the counsel will not be satisfied to go into Court unless he be made tolerably well acquainted with the contents of each and every of those publications. Hence this is in some cases a perfectly Herculean task for the counsel as well as for the parties instructing them. If on the one hand the plaintiff were confined to a precise expression of the cause of complaint, and if on the other hand the defendant were not permitted to put in any of these publications without giving a

short explanation of the exact point upon which he relied, which was said to be contained in those publications, then I think that a Judge would find that a Patent action was not, or ought not to be, heavier than any other action which I can imagine, or with which I am acquainted.

366. Then, if I understand you rightly, you think that the principal fault of the present mode of procedure is that the patentee when he comes into Court to defend his Patent is not required to state with sufficient accuracy the precise point in which he considers that it has been infringed?—That is so, and it very often happens that the defendant has not the slightest notion, until he hears the counsel state it with exactness in opening the case, what the precise point of complaint against him really is. A barrister stated to me yesterday, in regard to a case in which I had recently given evidence, that he had not known the exact cause of complaint up to the time when my evidence was given, and I was the last witness.

367. (*Sir H. Cairns.*) You have spoken of the increased expense of Patent actions, and I gather from your explanation that the alterations which have been made in the pleading have been intended at all events to bring about what you desire?—Precisely; nothing can be better than the theory of the pleadings; the plaintiff has to draw up his particulars of breaches; if the defendant is not satisfied he takes out a summons before a Judge at chambers. The general answer to the requirement on the part of the defendant for better and further and more exact breaches is this: the Judge says, "Why, you have got the plaintiff's Specification, and you must know all about it." That would appear at first sight to be a very reasonable and proper answer, but when you come to test it in fact it seldom happens that a defendant is accused of infringing the whole of a system or the whole of a combination, but he is accused of infringing some special portion of the combination or some special new character which that combination brings out. Therefore, the defendant's machine may appear to an unpractised eye to be entirely different until some one portion is set apart from all the other portions, and on comparing that with something in the Specification of the plaintiff, you find either a substantive exactness or positive exactness; and I should say that in most of the cases which are tried that is the class of infringement which comes before the Court; it is a constructive infringement and not an infringement of the whole for which the Patent has been taken out.

368. Is it your opinion that the alterations to which you have referred, which have been made in the pleading, have rendered trials at the present day more expensive than they were before those alterations, or that those alterations have lessened the expense to a certain extent, but not so much as one would desire to see it lessened?—My opinion is, that the new system of pleadings as carried out largely increases the cost of Patent actions coupled with the circumstance of the publication of all the Specifications, which allows of a mass of supposed defence being readily got up, and thereby largely increases the expenses; it is the multitude of Specifications which are put in in answer which create the expense.

369. (*Mr. Waddington.*) Then, would you revert to a declaration without any assignment of breaches?—Certainly not.

370. Why not?—You would leave everything open, and would be subject to surprise when you got into Court for the first time.

371. Would not that be more expensive than the present mode?—It would be less expensive in the immediate trial, but you would have new trials; and on the second trial you would not be sure that the same or only the same defence would be brought against you as you had on the first, otherwise a first trial would be the best possible way to get a correct issue to try in the second trial.

372. I presume that the plaintiff is not now allowed to give evidence of any infringement which is not

distinctly described in his notice?—Certainly not; but the notice is in such general language that it traverses the whole Specification.

373. (*Mr. Attorney General.*) You mean the particulars of breaches?—Yes.

374. (*Mr. Waddington.*) Cannot you apply for further and better particulars?—Yes; you apply to a Judge; but the Judge is wholly unacquainted with the contents of the Specification, and is not informed that it may be only a part of what the defendant is doing which is similar to a part of that which is in the plaintiff's Specification.

375. (*Sir H. Cairns.*) Supposing that the plaintiff gives particulars of breaches 50 in number, and that expenses are incurred on both sides in preparing evidence, and that he fails upon 49 but succeeds upon one, of course he gets a verdict; but how are the costs of setting up 49 long breaches dealt with?—If the essential issue is found on the part of the plaintiff the costs paid by him will be exceedingly small as compared with the costs to which he has put the other side. I will give you an instance. Supposing that the plaintiff is nonsuited, the statute states that a defendant shall only recover costs in regard to such of his objections which he has proved, as certified by the Court. If a plaintiff is nonsuited the defendant can recover none of his costs with regard to all the ordinary evidence of want of novelty and want of infringement, because the defendant has not developed his case and the judge cannot certify.

376. Do you mean that if a patentee sues an alleged infringer, and the defendant says, "I have not infringed, and in addition to that your Patent is not new," and gives notice of various other Specifications showing that the Patent is not new, and has his witnesses ready to prove his case, and the plaintiff fails upon the opening of his case on his own showing, and is nonsuited, the defendant has no power of recovering costs?—He has no power of recovering costs in getting up his defence to prove that the invention is old and that he was not an infringer.

377. What costs does he get?—Only the general costs of the suit, which are very small compared with the whole.

378. (*Mr. Waddington.*) He would not get the costs of the issues raised upon those particular things?—No.

379. (*Mr. Attorney General.*) They are not disposed of on a nonsuit?—No. The Judge has to certify under the statute to enable costs to be recovered that the defendant did prove, and to make a schedule of what has been proved by the defendant.

380. You are aware, no doubt, that the present system of pleading, namely, giving the particular breaches and the notice of objections, is all provided for by the 41st section of the Act of 1852?—Yes.

381. Previously to that I understand you to say that the pleading was the general issue simply?—Yes.

382. That of course gave no particular information of any kind to the other side?—Not of any kind.

383. Not even in general terms?—No.

384. Neither was the declaration accompanied by anything which gave any precise information at all?—No.

385. Therefore I take for granted that as far as regards the communication of information by the plaintiff to the defendant with respect to the breaches, and by the defendant to the plaintiff with respect to the affirmative defences or other defences, more information is given by the present system than was given previously?—Yes.

386. You have adverted to the publication of Specifications at the Patent Office, as having turned out to be a means in your judgment of increasing expense?—Yes, in contesting Patent actions.

387. I presume you mean that a reference is made easily to those various Specifications by industrious and ingenious persons, who see whether from a great mass of Specifications they cannot pick up some one or more which may bear upon the case, although they

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may not have been in any one's contemplation at the time of the infringement?—Precisely.

388. Supposing the old system of pleading to have continued, namely, the mere general issue and a mere declaration, but this system of publishing the Specifications to have come into use, can you say whether the evil of which you now complain would not in all probability have ensued and in an aggravated form?—I think it possible that it would.

389. Having regard to the provisions of the 41st section of the Act of 1852, are you prepared to suggest any improvement. I understand that you would not go back to the old system?—Certainly not.

390. Can you suggest any improvement in either of these two respects, that is to say, the delivery of particulars of breaches with the plaintiff's declaration and the delivery with the defendant's pleas of notice of objections?—In regard to the particulars of breaches I have already stated that I entertain a very strong opinion that the plaintiff should be bound to give a precise definition of the thing which he complains of on the part of the defendant, the same as he now does when his counsel comes into Court and defines before the Court and jury the exact issue which he is going to put upon the defendant to answer. If we had that on the part of the plaintiff, then on the part of the defendant I would require that whenever he is going to put into evidence the Specifications of preceding Patents, or a publication of any sort, he should give as regards each of those documents a statement of what he is going to prove out of them to meet the issue which the plaintiff has put upon him.

391. Then I understand you, as regards particulars of breaches, the language of the statute being that the "plaintiff shall deliver with his declaration particulars of the breaches complained of," that if the law were altered you would have some expression which would make "particulars," more precise?—Yes. There was the case which was tried some time ago, that of *Lister v. Leather*, with reference to combing wool, and which I referred to in my former evidence.

The defendant's machine when the case came on for trial appeared to an unpractised eye, and even to men well informed on these questions, to be a totally different machine from that of the plaintiff, but the moment that the proposition was put forward by the present Lord Chelmsford (then Sir Frederick Thesiger) that the accusation was the putting the dirty ends of half cleaned tufts of wool into a comb it narrowed the matter into an exceedingly small question, aye or no, was it new to put a dirty-ended tuft into a comb? if not, any machine containing that system of action contained that which was the essence of the plaintiff's invention. Now had the breach or breaches set forth that fact in exact terms as it was set forth when it subsequently came before the Court, there could have been comparatively little difficulty in trying that issue; whereas it was one of the most costly actions that was ever fought. It is true that it was a trade fighting against an individual.

392. (*Mr. Fairbairn.*) Did that apply to the combing machine?—Yes; it was *Lister's*.

393. (*Mr. Attorney General.*) As to notices of objection on the part of the defendant, I understand you that you would require that amongst other things he should point the objections?—That he should point the objection to the issue.

394. That is to say, that referring, say, to a former Patent granted to A.B. in 1852, he should not simply refer to it by title, and name, and number, but state in terms in what way he considered it to be an anticipation, or in some other way to invalidate the plaintiff's Patent?—Yes; for instance, the defendant might say, "I am doing precisely that which is described in that Specification, and I intend to use it at the trial, saying that if I am infringing the plaintiff's Patent then the plaintiff's Patent is invalid, as it claims that which previously existed."

395. Is it the practice in giving notices of objection simply to refer to the previous Patents enumerating them by date and title?—Usually it is so; and

then the plaintiff goes to a Judge at chambers and the Judge at chambers looks at the Specification and says, "This is a very heavy Specification, and a large number of things are described in it; you must mark the pages and the drawings on which you intend to rely." This is very commonly answered by the defendant saying "I intend to rely upon the whole."

396. And in practice is it known to you that that has been allowed to pass as a sufficient compliance with the statute?—Constantly.

397. Have you ever thought of suggestions by which greater particularity in the breaches, and greater precision in the notices of objection, might be to some extent ensured by provisions with reference to costs?—I think they might be so ensured to some extent.

398. That is to say, casting upon the plaintiff who gives particulars of breaches which he does not sustain, and upon the defendant who gives notices of objection which he does not sustain, the whole weight of the costs of those matters as if they were distinct matters of pleading?—That would have a certain effect upon it; but you are aware of the difficulty which a Judge has in certifying in a trial all that has come before him. The difficulty would be the increased burden put upon the Judges with regard to costs, and I am afraid that the benefit would be very little.

399. Would not the effect of a provision as to costs be preventive, in your judgment, so as much to diminish the number of particulars of breaches and of notices of objection?—I think so to some extent.

400. Then if that were so there would not be the same embarrassment on the part of a Judge as there is with the present multitudinous number of breaches and objections?—Possibly not; at present there are but one or two breaches attached to a declaration.

401. But the objections are very numerous?—Yes; I have seen as many as 100 objections branching out to some 10 or 20 heads in each objection.

402. (*Sir H. Cairns.*) Is there any way in which the complication of these objections and particulars of breaches of which you speak can be checked, except by dealing with costs. Let us put this case,—of course before a trial comes on the Judge cannot try the question in advance. Supposing that a defendant chooses to say, "I rely upon every sentence in a particular Specification taken out ten years ago for the purpose of showing that your Invention is not new;" what is a Judge to do? Is he to say, "It is quite impossible that every sentence can be material and useful; show the particular sentence or sentences?"—That is why I stated that I would not allow the sentences or the parts of the Specification to be given, but I would have the defendant give a statement of the exact point or points which he intended to prove out of the Specification with reference to the issue put upon him, every invention is capable of being stated in a few words.

403. Suppose he says, "The Specification is in the words and figures following; and I really say that that is the very Invention for which the plaintiff has a Patent?"—I can only answer you in this way with regard to things of that sort: when I am sitting as an arbitrator, counsel, parties, and witnesses do not visit me with a mass of Specifications, and where they have given notice of these things they frequently do not produce them at all.

404. That is to say, they give notice beforehand that they will use them, and when the case comes to trial they do not use them?—Yes; for this reason, that they will not insult my judgment by producing a quantity of documents before me which they know I can read and decide for myself their nature.

405. Is not it now very often the case that a defendant who has given a great many notices of objection does not actually bring them forward when the trial comes on and brings forward very few?—

He very often brings forward comparatively few; at other times the parties bring forward a large number, and they cross-examine and examine witnesses on both sides with reference to them, by which there is such a cloud at the end of the case, and Judges and juries are so confused, that they have not the slightest notion what they have to decide.

406. But that does not occur where you are sitting as an arbitrator?—I have never found it when I have been sitting as an arbitrator. An arbitrator can make the parties define as closely as he pleases.

407. (*Vice-Chancellor Wood.*) You are aware that the defendant may not only prove a want of novelty in the particular part of the Patent which he is accused of having infringed, but may prove a want of novelty in any part of the Patent in order to be a defence to the action even if he has infringed a particular part, and if the particular part which he has so infringed happens to be new?—Yes.

408. Then you would apply your mode of procedure to all the rest of the Patent, namely, that if he finds a Patent containing five, six, or seven inventions, and wishes to dispute three or four of them, you would make him specify the ground upon which he objects to the novelty of every other part of the Patent?—Yes; if a Patent has six claims of invention, and he wishes to attack No 1. for want of novelty, I would not allow him simply to say, "Such a Patent was taken out at such a date which destroys the novelty of the plaintiff's Patent," I should require him to say "I bring forward that Specification with a view to prove that No. 1, which is a claim on the part of the plaintiff for doing so and so, is found and contained in the Specification produced."

409. While the matter is in a state of pleading, before the parties have got to the distinct issue, and before the Judge has distinct control over the case in trying it, suppose the defendant says, "I mean to rely upon the whole Patent," how would you enable the Judge to deal with that objection, is he to hear that objection before trying the case, or afterwards?—My own feeling is that you must give the Court additional power with reference to dealing with pleadings before they get into Court. I think that a Master of the Court, or some such person, aided by some proper officer, who should understand the manufacturing or the engineering, or mechanical character of the question, should determine the pleas before they get into Court.

410. That would be a preliminary hearing on that part of the case?—Not a preliminary hearing of the case, but the plaintiff and defendant should be bound to place all matters before the Master, or before whatever other officer you have, to see that the breaches, or the notices of objection, were reasonable and properly drawn.

411. That could not well be *ex parte*; a man would not apply to reduce his own pleadings?—No, it must be a hearing before some proper officer.

412. Would you have counsel there or not?—I suppose so, but I am afraid that counsel generally increase the occupation of the Judge and of all other parties.

413. (*Mr. Fairbairn.*) Is it not the duty of the plaintiff to define clearly and distinctly what is the nature of his complaint?—It is the duty, but not the practice.

414. To show to what extent he is injured by the infringement?—It is not the practice. The plaintiff simply avers that the defendant has infringed his Patent by doing so and so, which in fact includes the whole description of his Specification.

415. Then is it left to the defendant to show to what extent he has infringed the Patent?—Then the defendant has to defend himself, and as I tell you, very often the defendant and his counsel and advisers do not know the issue till he gets into Court, and then when the plaintiff's counsel stands up and tells the Court and jury the precise point which he is going to put before them, and directs their attention to it, that is very often the first time that the defendant

and his advisers are informed of the real issue which they have come there to try.

416. (*Vice-Chancellor Wood.*) From the very nature of discovery must there not be an increasing expense with reference to Patent actions in this respect, the greater the multitude of inventions the greater becomes the risk from year to year of their having been anticipated by some anterior invention, does it not?—I think not. Invention is like a ladder, the preceding rounds of which have brought you up to a certain point, and from this in making further progress you must start, and, practically, those who are generally well informed upon the history and state of the particular manufacture will tell whether it is a new step or not.

417. In some cases are there not very long gaps in the steps of the ladder between the Patent which is relied upon for invalidating the subsequent Patent and the subsequent Patent itself?—There are all stages.

418. (*Mr. Forster.*) I think you stated that in comparing the new mode of pleading with the old mode of pleading, the old might have the advantage in immediate expense, but rendered new trials more likely?—Yes.

419. Has the proportion of new trials really diminished since the new mode was introduced, that is to say, the proportion of important cases in which new trials have been demanded?—I would not venture to speak from memory upon that point very positively, but I think that there were more new trials formerly than in modern times. There have been comparatively very few new trials in modern time.

420. (*Mr. Attorney General.*) You mean on the ground of surprise?—Yes.

421. (*Mr. Forster.*) In the very costly cases to which you have alluded, of the combing machine, it was tried over and over again, I think?—It was tried only upon two occasions. The Court was of opinion in the first suit that the Specification was so drawn as to include more than the patentee intended to include, and practically more than he had a right to include, and they suggested that he should take advantage of the statute and disclaim and alter his Specification so as to meet the real facts of the case, which he did, and then proceeded with the amended Specification.

422. The proposition which you have now made that the issue should be narrowed would in that case have prevented the new trial?—No, it would not have prevented the second trial, in that case, as at the first trial, the plaintiff could not recover because his Specification was held to claim too much.

423. (*Lord Overstone.*) Have I understood you correctly that when parties come before you as an arbitrator the frivolous pleas which appear to give rise to so much improper expense are never pressed?—I have had a large number of cases referred to me and I have had to settle a very large number of cases, but I am never troubled with a multitude of these previous publications.

424. Is that because those frivolous pleas fall to the ground in the presence of a competent tribunal?—It is wholly so, I believe.

425. Are we to infer from that evidence that the true remedy for the evils which we have been discussing is the improvement of the tribunal?—I think it requires improvement very decidedly.

426. And you think that the creation of a more intelligent and competent tribunal would go far to put an end to these difficulties?—I would not say a more intelligent tribunal, because my own feeling is that you cannot have a more intelligent tribunal than the Judges of the land, but I would endeavour to give to the Judges that quantity of technical knowledge which I may be supposed to possess, and a knowledge of manufactures generally. If we could only assist the Judge by some person external of the experts who come before him, and independent of the case which he had to decide upon, then I think we

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should get very near perfection. I should be very sorry to suggest anything to take it out of the hands of the Judges, because many points of very nice law arise, and only a judicial mind could deal with them.

427. Are we not to understand from your evidence that these frivolous pleas fall to the ground when the parties are called upon to bring them before a tribunal, which from its special and peculiar knowledge they are satisfied will not be deceived by such pleas?—That is so, certainly.

428. Then are we not to infer that if we create a tribunal with such competent knowledge upon that particular subject as that frivolous pleas will have no chance of misleading or puzzling that tribunal, we shall go far to accomplish the object in view?—I think you will.

429. Then do you think that the tribunal as now constituted, however competent it may be upon matters of law, is sufficiently intelligent in those matters which have reference to Patent law for the purpose of preventing the bringing forward of frivolous pleas?—I think that the Court for the trial of Patent causes at the present time is not so clearly informed as it ought to be. The Admiralty Court employs the aid of the Brethren of the Trinity House sitting as assessors with it. In the same way I infer that if you could have some parties as independent of manufacturing, mechanical, and engineering interests as those Brethren are of the questions which are brought before them,—if you could have any one who could sit with the Judge and could read the Specifications and hear the experts define what they found in them,—I think that you would reduce a Patent cause to a very simple issue indeed.

430. Is it your opinion that if a competent person, competent I mean upon the subject of Patent law and Patent processes, was associated with the legal authority, the consciousness that the tribunal was doubly intelligent, partly in law and partly in mechanics, would tend powerfully to check the introduction of these frivolous and costly pleadings?—I think that that would greatly check it.

431. Do you think that that would be a more efficient mode of checking it than by any specific previous legislation defining more correctly and closely the nature of the pleas which should be admitted?—I think so.

432. (*Vice-Chancellor Wood.*) Is it not the jury who determines all the questions of fact?—It is the jury who decides the facts, but the difficulty is to get the subject into facts so that the Judge can feel that after having read the Specifications, and after having heard the witnesses on the one side and the other as to what they contain, he can go to the jury with a full confidence that he is telling them that which they have to decide.

433. You have had a good deal of experience in arbitrations generally?—I have had a good deal of experience.

434. You have attended as a witness before arbitrators?—I have attended before arbitrators and also before Courts of Law.

435. Not only in Patent cases, but I think I have had the pleasure of seeing you in a large number of railway cases?—You have seen me in engineering cases generally.

436. Has your experience led you to this observation, that a great many of the fringes of a case drop off in the arbitrators' room across the table in every description of litigation?—I will not say in every description, because I have been lately engaged in two Patent cases where there have been arbitrators, and I must say that the fringes have increased in quantity and in length.

437. Is it not usually the case that that which is only thrown out to divert and distract the attention of a jury in a public Court, drops off the moment you come to discuss the matter before a single individual across a table?—That is so.

438. (*Chairman.*) In what you say I do not understand you to dispense with the agency of a

jury?—I have not said anything about dispensing with the agency of a jury, but my own feeling is, that in a Patent case if the Judge is capable of deciding the law, as he unquestionably is, and were equally capable of understanding and feeling that he understood the manufacturing question as well as he does the law, I should only be too glad to see him decide the case without the help of a jury at all. A jury more often than otherwise rely unnecessarily upon the Judge, and more often find their verdict by his direction.

439. (*Mr. Fairbairn.*) You are aware that it has been recommended that a commission should be appointed of gentlemen, one a mechanic, another a chemist, and a third a lawyer, in order to judge of these cases when an application is made for a Patent, and that they should decide whether the subject of it is a novelty or is not a novelty?—I am not aware of it in that form. I have heard of a proposition to investigate the question of the novelty of an invention at the outset, but from my own experience I unhesitatingly say that a chemist of the highest character, a mechanic or engineer of the very highest character, and a lawyer of the very highest character that could be found, would be a most incompetent tribunal to decide whether an invention brought before them was new and ought to be patented; there is not that universality of knowledge in any three men whom you may pick out which would enable them to judge whether a Patent ought or ought not to be granted.

440. (*Chairman.*) You are now speaking of an entirely distinct question from that upon which we are at present, namely, the question whether a preliminary inquiry should take place or not, and if so, before what sort of tribunal?—Precisely so.

441. But I understand the matter which we are now considering to be, before what sort of tribunal and with what forms of procedure shall the trial take place when a Patent is disputed subsequently to its being granted?—Yes.

442. (*Mr. Fairbairn.*) If such a commission as I have mentioned were to be appointed, with all this knowledge which you seem to think that the Judges are deficient of, would they not be more competent than the tribunals which now exist, I mean an entirely separate Court?—My own opinion is adverse to separate Courts, I unhesitatingly say that a legal man whom we might expect to lead a Court of that kind is very liable to get into what I, as a mechanic, would call a groove; it may be a good groove or it may be a bad one, and my own feeling is that a Court of that kind would be a most injurious thing, by going either too largely against the public or too largely against the inventor. I myself see no reason to take it out of the present Courts of Law and Equity, where we have the best legal powers to deal with such questions. I want to supplement that power which we have, simply by giving to them an independent assessor, who could tell them technically and correctly what the nature of each document produced was, and further than that, when experts were called before the Court, could tell that Court exactly whether an expert was leaning unfairly towards the side for which he was called, and whether he was putting every question in behalf of that side in the highest possible light, whilst he was depressing or putting into darkness as much of his opponent's case as he possibly could.

443. (*Mr. Waddington.*) These are very high functions which you give to this assessor; in the first place he would assist the Judge in framing the issues to be tried, that is what you propose?—Yes; the Master or some other officer.

444. You propose to have a scientific man, as I understand you, to assist the Judge in ascertaining what are the real points of issue between the parties?—Yes.

445. If that could be done with greater minuteness it would, in your opinion, save the parties a large amount of costs in the investigation?—I think so.

446. Then you propose that the same person, or a person of the same qualifications, should also assist the Judge on the trial of the issue?—Yes.

447. (*Sir H. Cairns.*) I understood you just now, in answer to a question by Lord Overstone, to express an opinion that if the tribunal was made more competent than it is at present, the difficulties to which you referred a short time ago as to particulars of breaches and notices of objections might be found to limit themselves, and might be dealt with as a question of costs afterwards?—Precisely. Those things would be less required when they came before an arbitrator, because he is supposed to be well acquainted with the subject, and so it would be to some extent with a Court assisted by an assessor. In a very large number of cases which come before me, the parties merely agree that they will refer the case to me for me to adjudicate upon all matters in difference between them, without any pleadings.

448. (*Mr. Attorney General.*) It frequently happens, as you know, in all sorts of actions that a cause is referred after the mere issue of the writ before any pleadings?—Yes. In some cases the cause is referred after the pleadings are joined; in other cases it is referred before any pleadings have taken place.

449. (*Mr. Waddington.*) I understand you to say that a scientific person assisting the Judge as assessor in settling the pleadings would in your opinion be a very great improvement?—I think so; a person thoroughly acquainted with the manufacture would enable the Judge to know what the contents of the plaintiff's Specification were, and he would be able to tell him whether the plaintiff was fairly and properly stating the cause of complaint.

450. And it would enable him to reduce the points in question to a much fewer number than they now usually are?—I think so.

451. Would you in addition to that have a scientific assessor to assist the Judge on the hearing of the cause?—I certainly think that that is more wanted than the other, because the Judge has a multitude of these documents placed before him, and he has a large number of witnesses who come to speak of processes which he cannot have carried on before him, so that it must be done only by words of description; and the Judge, not being acquainted with the nature of the manufacture previously, cannot always grasp and hold the whole of the matter so as to go to the jury with any degree of confidence that he is putting the real facts before them.

452. Then would you have the assessor instruct the Judge upon these matters while the cause is going on, or merely give his opinion before the Judge charges the jury?—My own opinion would be, that as to documentary evidence to be brought before the Court, the assessor ought to make himself acquainted with the contents of all these documents, and with the general matter beforehand, and then, either as the cause progressed or previously to its going to the jury, or from time to time he should give the Judge such information as he wanted in the matter.

453. (*Lord Overstone.*) I understand your view upon principle to be this, that when sitting as arbitrator you find that these objectionable pleas are brought before you to a very slight extent compared with the extent to which they are placed before a Judge and a jury?—That is so.

454. And you infer from that, that if the arbitrator could sit by the side of the Judge, the beneficial results produced in the arbitrator's Court would take place in the Court of Law?—That is my opinion.

455. (*Mr. Waddington.*) Have you considered what sort of an officer this should be?—I am aware of the difficulty which that question involves.

456. Have you considered the character which this person should have, whether he should be a public officer?—I think that he must be a public officer wholly independent of any profession or business.

457. (*Mr. Forster.*) I understand you to say that by the help of this assessor you would enable the Judge to define the facts which were to be brought before the jury?—If you chose to have a jury with them.

458. In your experience do you find that the impression which prevails pretty generally is well founded, namely, that the unsatisfactory nature of the tribunal arises very much from the incompetence of the jury, from the want of previous scientific experience, to comprehend the questions brought before them?—I think that the difficulty is often as great with the Judge as it is with the jury.

459. Therefore you think that if the Judge could be assisted by such an officer as you describe, so as exactly to define the facts before the jury, the average of juries would be competent to decide upon them?—I should say yes, but I should also say that, generally speaking, you would hardly want a jury.

460. (*Chairman.*) As I understand your proposition, the assessor, who is conceived to know most of the scientific bearings of the case, is to instruct the Judge, the Judge, who knows less of them, is to instruct the jury, and the jury, who knows least of them, is finally to decide the matter?—I have stated that I see no necessity for a jury under that state of things; on the contrary, I do not think that a jury could really help the question much.

461. (*Mr. Forster.*) Would you prevent the case being brought before a jury, or do you think that the effect would be that neither party would wish to resort to a jury?—I should imagine that a jury would in most cases be dispensed with; there are so very few facts in Patent cases, that really and truly juries very seldom have anything to decide with regard to facts; it seldom happens that the defence is grounded upon a previous user in which there is a dispute as to facts. I will, however, give you an instance, and one of which I have a very clear recollection; it was a case at Nottingham: there an order was obtained for me to examine a machine of the defendant's. I was shown into a room and examined a machine, and when I asked a question, I found out that they had shown me the wrong machine; they had shown me the machine upon which they were going to found their defence in place of their own machine. I told his Lordship as soon as I entered the Court that that error had taken place, and his Lordship immediately said, "It is a great pity that you did not examine it carefully, and come and tell us exactly what it is if the issue is to rest upon that machine." I then, at the wish of his Lordship, went and examined it, and came back and told him that if that machine existed previous to the plaintiff's Patent, then it was so substantively identical with the Patent that I could not imagine that it could stand. Then the question became wholly one of fact to prove whether that machine in its then state, or substantively in its then state, existed previously to the Patent, and that took the best part of a day trying, because the machine had been kept hidden to a large extent, not absolutely secret, for many persons had worked it, and many persons had portions of the fabric produced by it, and it came wholly to a question of fact for the jury after the Judge had submitted it to them whether that was a *bonâ fide* machine existing previously to the Patent. Now in modern times we have hardly ever had a fact of that kind to go to the jury on pre-user, the pre-user has been nearly always founded upon printed publications. There are very few cases of modern time where absolute pre-user is the defence, independent and separate from previous Specifications and publications.

462. (*Sir H. Cairns.*) You have referred to the analogy of the Trinity Masters in a suggestion which you made with regard to the improvement of the tribunal; have you followed out that analogy quite correctly, there is no jury there?—There is no jury there, at least, I think not.

463. Do you know how many Trinity Masters generally are present?—I do not.

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464. But whatever number there are the evidence is given before them and the Judge, and then, I believe, the Judge asks for their opinion upon the facts which have been proved, stating to them what the issues are?—I believe that they generally retire from the Court, and that then the Judge puts it to them.

465. I do not know whether you have ever been present at a trial in the Admiralty Court?—I have not.

466. Does the Judge inform them what he considers to be the issues, and ask them to apply the evidence which they have heard to those issues?—I have always understood that he does, but I believe that it is in private.

467. They are, as it were, in the place of a jury, with knowledge and experience?—Yes.

468. Have you ever considered how a tribunal would work composed of a Judge and with, say for example, three experts in the place of a jury, directed by the Judge as to the points to which they should apply their mind and their knowledge, and hearing the evidence to a certain extent in the same way as a jury hears it?—I have thought of it again and again, but the difficulty is that the persons whom you would call in as assessors or jurors in that form would be persons who would be most often closely allied, and largely interested in the issues which they had to try.

469. I did not assume that they were so; I put them upon the same footing as the assessors of whom you have spoken?—Then I cannot imagine that there are a class of men sufficiently separated from and independent of manufacturers, and at the same time suitable for deciding cases of that sort.

470. What occurs to you to be the greater difficulty in getting men to fill that position beyond the difficulty which there would be to get the assessor or the assessors of whom you have spoken?—The difficulty is that I do not know of such men. I say that you must take your assessors out of the business or profession which they have heretofore followed; whereas if you are to have jurors chosen for a special case, for instance, spinners or spinning machine makers, for the purpose of trying a spinning machine case, or Nottingham lace manufacturers, or machine makers, for trying a lace case, then I should say that the interest of these parties and their position would be such that they ought not to be put in the judgment seat to decide against their competitors in trade.

471. Apply those observations to the suggestion which you made just now, you may try a lace case with a Judge and a jury and an assessor?—I myself do not think that a jury would be wanted with an assessor.

472. Then you would try it with the Judge and the assessor?—Yes, and as assessors you ought to have men of high standing, who have been in a profession or in business, and whose abilities and character are such as to cause them to be chosen and taken away from their profession or their business, and then they would be as independent of the one or the other as the Judge is of all the causes which he tries.

473. If three assessors are to perform the part of a jury, what greater difficulty is there in getting men segregated from active professional occupation for that purpose than for the other purpose?—Because one does not find, generally speaking, that men give up their profession or business to come into Court to act as jurors.

474. I call them jurors rather to explain the duty which they are to perform; call them, if you please, assessors, if you like the name better. Assume that three persons, whom we will call assessors, with competent mechanical or other manufacturing knowledge, sit along with the Judge, and hear the evidence with the Judge, and that the Judge points out to their attention what he conceives to be the issues raised on the pleadings, and asks them to favour him with their report or statement upon those issues, they would, in that case, be performing the function of a jury?—

They would be performing the function of a jury, and I have no doubt that if they were independent of all interest, direct and indirect, they would be a very good tribunal to decide the case for the Judge, or to find the essential facts for him to found his judgment upon with regard to the issue.

475. Would not that combine what you stated as the two desiderata which occurred to you, namely, first, the head of the Court, with a competent knowledge of law and a habit of dealing with issues, and a habit of dealing with written documents, and on the other hand persons to weigh and consider the evidence, who would not be misled by experts who were advocates on the one side or the other, and who would understand the terms of art which were used before them?—That would be so; but then you cannot find those individuals, unless you make them officers and make it desirable on their part to give up their profession or business.

476. So that if they were found and would give up any personal interest, it would meet your view?—Yes; they would in fact become similar to an arbitrator, chosen by reason of his special knowledge in the particular case which he is called upon to decide.

477. (*Chairman.*) Does not it come to this, that for assessors such as you propose, you must have one of three things, either paid functionaries, or parties interested, or men who are superannuated?—Just so.

478. Of the three alternatives you prefer that of having paid functionaries?—I think so. The income from the Patent Office is such that a reasonable sum may be taken from that income and given to parties whom you would put into the judgment seat as I suggest.

479. (*Sir H. Cairns.*) Looking at the amount of legal Patent business of the country, both of the Common Law Courts and of the Court of Chancery, and the proceedings which might take place by *scire facias*, do you consider that there would ever be more than one body of three assessors of that kind required; would there necessarily ever be two cases going on together?—I should say not. I should say that three would be as many as you could possibly require.

480. (*Mr. Attorney General.*) You are aware, no doubt, that it has been the case for some years past, that if both parties to an action at law desire it, the trial may take place without a jury?—Yes.

481. Did you ever know the parties in a Patent action avail themselves of that option and dispense with the jury?—Yes, there was one case, and only one, I think; I do not remember more.

482. In your opinion, supposing the jury to be still retained in any shape, would it be an improvement if, instead of its being competent to the parties if they desire it, to dispense with a jury, a jury were not to be summoned unless the parties expressed a desire for it, as is the practice in the County Courts?—I think that that would be the preferable way of the two.

483. (*Mr. Fairbairn.*) Do you not think that the operations of such a tribunal would be rather complicated if you had an assessor sitting along with the Judge?—I do not think so myself; I think that the Judge would only ask him for information so far as he wanted it. Mr. Attorney General and his predecessors I believe have been in the habit of calling in the assistance of Mr. Woodcroft of the Commissioners' office in cases which they have been hearing, and where they have required assistance in a manufacturing point of view. I do not think that the Law Officers have ever found any difficulty in having a person to whom they could refer and ask questions from time to time.

484. But if you could impart all that knowledge which exists in the assessor to the judge himself, it would very much simplify the operation?—Yes, if you could find such a man, but I do not know any man with legal knowledge enough, and manufacturing knowledge enough, combining the powers of a Judge such as we now have, and those of the assessor proposed by me.

485. (*Vice-Chancellor Wood.*) Are there any other points in the procedure which occur to your mind?—There is one matter which I was asked to turn my attention to the last time I was here, namely, with reference to writs of *scire facias*. The question was put to me by, I think, Sir Hugh Cairns, how I would enable parties who feel themselves aggrieved by reason of an invalid grant to get rid of the grant without the ponderous and costly process of a *scire facias* as it exists, at present. I thought of the subject after I had been here, and it appears to me that in writs of *scire facias*, in place of allowing the writ to issue merely upon inquiring as to the parties who are to be prosecutors and requiring them to give a bond for costs, it is highly desirable that the Attorney General should hear the parties, the prosecutors, and their case, in order to judge whether it is reasonable and proper cause of action, before he permits the writ to issue; because now the defendant in the *scire facias*, the patentee, has to come into Court with the same absence of knowledge of what he has to meet as in the other cases of which I have been speaking. The Attorney General, before he gives his consent that the writ shall issue against the Patent, requires that the parties shall be proper parties, and if there has been any litigation or there is any pending litigation, he steps in and says, "You shall not be fighting this patentee both at law, with regard to questions of infringement, and also by a writ of *scire facias* at the same time." What I should like to see, and it would not be very costly, is, that the Attorney General should hear the case of the petitioner who seeks to be the prosecutor and require him to place before him the evidence which he intends to use and relies upon for getting a verdict against the validity of the Patent; the Attorney General would then, if he see cause to let the writ issue, direct the issue to be tried, and this I trust would be a pointed issue such as I have been speaking of with regard to actions at law, so that the patentee to defend his Patent might come with a thorough knowledge of the nature and character of the evidence which is to be brought against him. I think that the Attorney General would be benefited by having an assessor, such as Mr. Woodcroft or any other gentleman, sitting with him to hear the evidence of the petitioner. The Attorney General ought to hear the case in the presence of the patentee, not allowing him to bring rebutting evidence, but hearing the evidence given, so that he might go into Court with a thorough knowledge of what he is going to fight. Up to the present time the defendant in *scire facias*, the patentee, goes into Court without the slightest knowledge of what he has to meet when he gets there, and the consequence has been that up to very few years ago no Patent had lived through a writ of *scire facias*.

486. (*Sir H. Cairns.*) According to the present practice, are not particulars of objections delivered?—Yes, but they are of that general character that you can get nothing at all out of them.

487. (*Mr. Waddington.*) Then you think that that is a dead letter, and is of no use to the defendant?—It has proved so in most instances, because I think that I never heard of a writ of *scire facias* going into Court where it was not complained of, and with good reason, that the defendant had been taken by surprise, and in most cases it has been tried again.

488. (*Sir H. Cairns.*) The defendant in *scire facias* is as well off, however, as the plaintiff in an action for infringement?—Just as well off.

489. (*Mr. Waddington.*) There is an express provision in the statute that no evidence shall be given on any subject of which the defendant has not notice, is there not?—Yes; but the language of the notices is so vague that when you come into a Court of Law you do not know what you have to meet. I remember a case, which was tried some years back, where the question was, whether the notice of objection was large enough to let in certain evidence; it was large enough to let in anything, and therefore it was let in. The notice is given in such large terms that

practically it is no notice at all; that has been the working of it. You are not permitted to give evidence of anything of which you have not given notice, but so large is the notice which you give that it will take in anything which you can possibly bring to bear upon the case.

490. (*Sir H. Cairns.*) Who begins in a writ of *scire facias*?—The patentee, I think, begins; but I know that he gets a final reply.

491. How long has that been the practice?—Only for a very few years.

492. Has any Patent been repealed by *scire facias* since that practice began?—I think that there have been three repeals since, but I cannot speak with any confidence; there have been some repeals since, and I think that the number is three.

493. (*Vice-Chancellor Wood.*) You spoke at the beginning of your evidence of the advantage in Chancery of having facts raised by affidavits; do you think that it would be of any advantage that there should be an affidavit as to belief of the averments if the case took the course which you have suggested of going before the Attorney General?—I have a great dislike to swearing on paper.

494. But you spoke before of the advantage of having the issues arrived at on paper?—Yes, that is getting the issue not proving it. We have for many years gone to the Court of Chancery as plaintiffs in order to ascertain what the defendants were really upon; we have constantly done that, and of modern time the definition by the plaintiff in his bill of the thing complained of, has generally been drawn up with great exactness. I have assisted counsel again and again in preparing these definitions. Then the defendant, if there is an application for an injunction, has to answer by himself and witnesses, and make out as clear a justification as he can on his own part, or an injunction would go against him; thus he is obliged to be very specific. In your Honour's Court he does not put in a bundle of blue books and say, "You will find it there;" but he tells you, "You will find in paper A so much, and in paper B so much, and in paper C so much," with great exactness and particularity, and then we can judge tolerably nearly by reason of the particularities on the one side and the other what really is the issue not only in Chancery but often in the trial at law.

495. So far the result is arrived at on paper, and in a manner satisfactory to your mind?—I grant you that; but what I object to in the Court of Chancery with regard to affidavits is this: For a great many years I have observed that in Patent cases we have constantly had exceedingly well-drawn affidavits pointing to exact and nice facts which met the case exactly in answer to the plaintiff. Of course the Court of Chancery did not have the witnesses before them, and when it got before a Court of Law these witnesses who had made such very nice affidavits either did not appear at all, or if they appeared took all parties by surprise by a positive ignorance of the things which they had sworn to so nicely on paper. For that reason I have the greatest disrespect for affidavits, and ever since I have been a professional man I have refused to make any affidavits but those prepared by myself.

496. (*Sir H. Cairns.*) Recurring to the proceeding by *scire facias*; on a former occasion I understood you to express your opinion that with reference to the granting of Patents in the first instance, you thought that it would be very inconvenient and perhaps impracticable to have a preliminary investigation conducted openly, with opposition heard, before the Patent was granted. Has it occurred to you that, avoiding that which you consider to be inconvenient, namely, a preliminary investigation, you might arrive at the same end by providing, for any one aggrieved by the grant of a Patent, some cheap and summary way of setting it aside, for instance, by taking out a rule to show cause, calling on the patentee to justify the Patent which he has thus obtained?—I do not think that a cheap remedy could

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be obtained by that course of action, but I do think that if a party feeling himself aggrieved went to the Attorney General and said, "I have such and such evidence to show that that Patent is a bad Patent," and that if it were heard, and there were a clear case to justify the Attorney General in directing an issue to be tried upon the subject, most bad Patents would fall and stop the moment that the Attorney General had stated that an issue should be tried.

497. Then you would have it argued before the Attorney General, I suppose, in the usual way, with counsel?—No, I would only have it argued on the side of the petitioner, that is to say, the party seeking to be the prosecutor; something in the nature of the investigation by a grand jury; and if the Attorney General was satisfied upon the merits then brought before him, that there was a reasonable cause to believe that there was a want of validity in that Patent, he should direct an issue to be tried. I believe that very few men, after such an inquiry and such a direction, would defend their Patents.

498. Would it be an *ex parte* proceeding before the Attorney General?—I think not; I think that it ought to be in the presence of the patentee, but that he should not be permitted to bring rebutting evidence.

499. That is to say, that the Attorney General would try the case in the presence of both sides, the one side being allowed to bring evidence, and the other not?—Yes, because I think that the issue should be tried by a Court of Law, in order to deprive the patentee of his Patent, if he chose to defend it.

500. Assume that the other side had rebutting evidence, which the moment that the case went to a Court of Law he produced?—The rebutting evidence could only be of this sort: supposing that there were some matters of fact of a pre-user, such as you suggested upon a former occasion, that a manufacturer had been working for some years in a particular way, and one fine morning received notice that he was infringing a Patent which had been taken out a short time previously, he would not wish to be a defendant in an action, but would put himself in motion and endeavour to get that Patent repealed; he would then go, in the way that I would venture to suggest, to the Attorney General and ask to be prosecutor in a writ of *scire facias* to repeal that Patent. The Attorney General would then hear what he had to say, and assuming the facts to be such as you suggested upon a former occasion, namely, that the party had himself in his own factory been using the process for some time, he would put that evidence before the Attorney General, and the Attorney General upon hearing it would direct an issue to take place, and then the patentee having heard that, and being aware of what really was the case, would not venture to defend his Patent.

501. Do you think that it would be conducive to the ends of justice that a case should be brought into Court, with the knowledge on the part of every one that the Attorney General had before adjudicated on the matter to a certain extent?—I think so. He would only have been invited to permit the Queen's name to be used in a writ of *scire facias* for repealing the Patent, it would be known that he had such evidence brought before him as justified him in issuing a writ of *scire facias* not as a matter of course, as now is the case, but he would have done it upon clear and reasonable evidence, which required an answer, or otherwise the Patent should fall.

502. (*Vice-Chancellor Wood.*) It would be something like the Attorney General's fiat in an information on a charity?—Yes.

503. You are aware that in that case he does not look into the evidence, but merely sees that the statements warrant the fiat?—Yes. I want him to go a little further than that. I want him to be satisfied that the evidence is such as to justify and require him in fact to allow the Queen's name to be used.

504. (*Mr. Waddington.*) In a sort of *ex-officio*

manner?—He acts *ex-officio* now in permitting the writ to issue, but he does not inquire into the facts brought against the Patent. He represents the Queen, in fact, the same as if you went to the Crown and asked for permission to use the Queen's name in repealing any other grant which the Crown had made.

505. The ground of proceeding is, that the Crown has been deceived in making that grant?—That is the technical ground.

506. You propose that before the Attorney General assumes that he should have certain evidence?—Yes, and if he once took evidence on the part of the party seeking to be prosecutor, and had a clear case made out to induce him to direct an issue upon the question, (confining the party to what was then brought forward), I believe that in many cases the allowing the writ to issue would practically decide the question, and that this would sweep away many invalid or worthless Patents.

507. The same inquiry would enable him to confine the issues within reasonable limits?—It would do so.

508. And to send the parties to trial?—Yes, the one to defend his Patent upon that evidence, and the other to bring forward that evidence, and not rake for evidence subsequent to the issue of the writ.

509. (*Mr. Attorney General.*) What would be the advantage of the presence of the patentee, who, according to your scheme, is not allowed to take any part in the discussion?—The object of the patentee being present would be merely for the purpose of hearing the evidence against his Patent, and the nature of the evidence which would be brought if the case was permitted to go into Court. Having that knowledge, unless it was a very clear case, and he had a good defence, he would never think of defending the Patent, and the probability would be that he would not defend it, and then you would only want a mere warrant or document ordering it to be cancelled. The Attorney General would put the patentee upon certain terms, to appear within a certain time, to defend his Patent after what he had heard, and if he did not come forward and defend it the Patent should be repealed by an order of the Crown, or any other necessary form. You cannot repeal and take off the seals from a grant of the Crown without some form consistent with the nature and dignity of the grant.

510. (*Lord Overstone.*) Might not there be some danger in a case of that sort of a patentee being worried out of his Patent. You have spoken of a case in which you said that there was a trade on one side against the patentee on the other; would not what you have proposed give the trade great power to fight the patentee?—They have now that power, and the trade very commonly get up a fight against a Patent, but I think that it would give the patentee a far better standing than he has now. At the present moment any person in a trade may go to the Attorney General, and supposing that there are no actions pending, and that there is no special reason against the prosecutor, and he gives a bond to the Attorney General for the costs of the patentee in the event of the patentee succeeding, he will obtain a writ of *scire facias*, and he may rake up the history of the whole manufacture, and bring it into Court, giving merely a quantity of general notices which will include everything that ever was done. Therefore the patentee has to fight the matter now in the dark, whereas I propose that he should fight it in the light.

511. (*Vice-Chancellor Wood.*) You suggest, I suppose, that the Attorney General should not grant a second writ on the failure of the first without very strong reason?—Certainly not. I should say that it would be one of the best things possible to check further litigation.

512. (*Mr. Forster.*) Would not the provision of which you speak rather tend to give an unfair advantage to the opposing party in this way, that if he had the opportunity of hearing the whole of the

evidence to be brought against him, before coming to trial, he would have an opportunity of making up his own case?—He has his Patent and his Specification and nothing else; he is limited, he cannot make up a case, he has his document; the prosecutor brings it before the Attorney General and says, "This Patent is bad;" the Crown, through the Attorney General, says, "If the Crown has granted it from mis-information it is but proper that the Crown should repeal it; what is your evidence in order that I may see that you have a substantive reason and sufficient evidence to show that this is a bad grant?"

513. Still the patentee would be in this position, that he would have heard sometime previously all the evidence to be brought against him?—And so he ought; surely a man who is to be deprived of his property ought to know before going into Court the exact things which he has to meet, and to be advised upon it, whether he can wisely go into Court. Anything which contributes to a surprise in trying a case in a Court of Law, I think, is prejudicial to litigation in every shape or form.

514. Is not that upon the supposition that both sides are *bonâ fide* in their proceedings, because otherwise it is surely a very great advantage to any party to have heard all the evidence that is to be brought against him, and to be allowed full time to pick holes in that evidence?—I am aware, and have been for a great many years, of lawyers saying, "You might as well show your brief to the other side." I can only say that my experience has been this: that when witnesses on both sides have been ordered to examine machinery and to report to the parties, and those reports after the investigation have been handed to the other side, and thereby the points of litigation accurately defined, the cost of the litigation has been very small indeed; but when the reports of the inspectors on the one side and the inspectors on the other have been made and have not been exchanged, the litigation has been massive and heavy and costly to a large extent as compared with those cases where an exchange of reports has taken place. It is a very common thing in the Courts of Chancery to order that the plaintiff's engineer shall see the defendant's works, and that the defendant's engineer shall see the plaintiff's works, and in some cases they have consented that the reports of the two parties

should be exchanged, and wherever that has been the order the litigation has been marvellously reduced, because the issue then has been put with exactness upon the facts.

515. But I understood you to say that you would oblige the party who moved for the *scire facias* to give all his evidence, but that you would not oblige the person who would have to reply to it to give evidence before the trial came on?—The party who has his Patent, has nothing but his Patent.

516. But he brings evidence on the trial?—He cannot bring evidence to support the Patent against positive evidence that the thing was done before.

517. (*Vice-Chancellor Wood.*) He may have an advantage as to contradicting the plaintiff's witnesses?—Undoubtedly, and he ought to have it, according to my judgment, if truth be on his side and untruth be on the other side.

518. (*Chairman.*) Have you anything to add to what you have already stated on the subject of the best tribunal to try actions and suits instituted by patentees?—I would only add that if assessors such as I have proposed should be appointed, they should have power to hear cases where the parties might be willing to abide by their decision without going into a Court of Law or Equity. In such cases the assessors should have the power when necessary to state a case for the opinion of any one of the Courts of Law or Equity.

This mode of trying a case would be very advantageous and cheap, particularly if the real issue between the parties be simply whether the defendant is or is not infringing the plaintiff's Patent.

It would also in some cases be very desirable that in place of engineers or others being appointed on both sides to visit and examine the plaintiff's and defendant's factories, that one or more of the assessors should attend and report to the Court, if the question be before a Court, or to aid such assessor or assessors in deciding the case if it had been referred to the assessors by the parties or by the Court.

I do not think that I have anything farther to add; any questions which your Lordship or any other member of the Commission may wish to put I shall be very happy to answer.

The witness withdrew.

Adjourned to to-morrow at half-past four o'clock.

Wednesday, 17th December 1862.

PRESENT :

The Right Hon. LORD STANLEY, M.P.
The Right Hon. LORD OVERSTONE.
VICE-CHANCELLOR SIR W. PAGE WOOD.
SIR W. ATHERTON, Q.C., M.P.

HORATIO WADDINGTON, ESQ.
W. E. FORSTER, ESQ., M.P.
W. FAIRBAIRN, ESQ.

THE RIGHT HON. LORD STANLEY IN THE CHAIR.

LEONARD EDMUNDS, Esq., examined.

519. (*Mr. Attorney General.*) You hold an office in connexion with the Commissioners of Patents?—I hold the office of Clerk of the Patents, an office under the Crown, appointed by the Sign Manual. I have held the office since 1833.

520. (*Chairman.*) Will you state what the duties of that office are?—I am prepared to go into the detail of the whole proceedings in the office in passing Patents. I have some written notes which, with permission, I will read.

521. We shall be obliged to you if you will make your statement in any manner which you prefer?

Acts.—The earliest general Act known relating to Patents for Inventions is the Act of the 21st of James

the 1st (1623), the "Act concerning monopolies;" grants by Letters Patent of exclusive privileges to carry on certain manufactures, and to use new inventions had, however, been made from time to time, and long previously to the Act of James the 1st.

No general Act relating to or regulating grants of Patents for inventions appears to have been passed from the date of the Act of monopolies (James the 1st) until the several Acts of 5th and 6th William the 4th (1835), 2nd and 3rd Victoria (1839), and 7th and 8th Victoria (1844). These three Acts are for the allowance and regulation of disclaimers on Specifications; for the prolongation of the term of a Patent by the Judicial Committee of the Privy Council, and for the

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Esq.

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Esq.

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allowance and regulation of the costs of actions on Patents.

Private Acts appear, however, to have passed from time to time previous to the Act of 1835, for the prolongation or confirmation of Patents.

The Act of 1852 (the 15th and 16th Victoria, chapter 83) was passed in July 1852, and came into operation on the 1st of October following.

Lord Chancellor St. Leonards, Sir John Romilly, Master of the Rolls, Sir Frederic Thesiger, Attorney General, and Sir FitzRoy Kelly, Solicitor General, were the first four acting Commissioners of Patents, and they accordingly brought the Act into operation. The Law Officers of Ireland and Scotland are *ex officio* Commissioners under the Act, but no one of these officers has ever acted as Commissioner.

Lord St. Leonards, under the 28th section of the Act, directed the Specifications (formerly enrolled in Chancery) to be filed in the Great Seal Patent Office.

Under the provisions of the Act three separate offices for the passing of Patents might have been either continued in operation or newly constituted, namely, the Great Seal Patent Office (an old office), the office of the Commissioners (a new office), and the office of the Attorney General for making the warrants (also an old office). The Commissioners, however, upon consideration, decided that one office only should be constituted for the whole business of passing the Patents, and accordingly they ordered the office of the Commissioners to be combined with the Great Seal Patent Office, and the warrant of the Law Officers to be made in the combined office. They appointed the Clerk of the Patents, for the time being, to be the Clerk of the Commissioners, and thus the whole duties of the office were imposed on the Clerk of the Patents. They also, with the consent of the Treasury, under the Act, appointed a staff of clerks, and an officer designated the Superintendent of Specifications for the printing of Specifications and other works. Prints of Specifications, and the accompanying drawings, duly certified, are under the Act received in evidence of the originals in all courts. These drawings are, in almost every case, exceedingly minute and elaborate, and the office of Superintendent of Specifications can only be filled by a competent mechanical engineer and draughtsman.

Grant of Patents.—Patents for Inventions are now granted under the Act of 1852, and the Acts of 16th of Victoria, and the 16th and 17th of Victoria to amend the same. I think it would be useful to print the several papers I propose to put in the Appendix. These several Acts of Parliament, under which Patents are now granted, might be usefully reprinted in the Appendix.

522. (*Mr. Attorney General.*) Do they begin with the Act of 1835 or with the Act of James?—With the Act of James.

523. (*Chairman.*) If you will recite the Acts to which you refer, the Commissioners will consider whether it is necessary to reprint them?—They are the several Acts already mentioned.

Previously to the Act of 1852 the Patent was granted for England only, passing through six different offices distant from each other, and lying between Whitehall and Chancery Lane. The English Patentee, desiring to extend his Patent to Scotland and Ireland, obtained a separate Patent in each country, the instrument passing through several offices in each country, thereby trebling the costs in fees and stamp duties, and the charges of the three several agents.

Cost of Patents.—The cost of the three Patents previous to 1852, in fees and stamp duties, amounted to 350*l.* or thereabouts, the whole sum being paid at once on the passing of the instruments.

The Patent, under the Act of 1852, extends to the United Kingdom; it is passed in one office, and the cost in fee stamp duties and revenue stamp duties (the payments extending over seven years) amounts in

the whole to 175*l.*, as contrasted with the old charge of 350*l.* paid at once on the passing of the three Patents; 25*l.* is paid in five separate payments of 5*l.* each on the passing of the Patents, and the applicant may make these five payments at intervals during the first six months. 50*l.* is paid at the end of the third year, and 100*l.* at the end of the seventh year. The Patent is granted for 14 years, and becomes void at the end of the third or seventh year, in default of either the second or the third payment. There being but one Patent for the United Kingdom, and one office, the charges of the Patent agent do not now amount to much more than one third of the agency charges previous to 1852.

Rules and Orders.—Various rules and orders of the Lord Chancellor and the Commissioners of Patents have been issued from time to time under the provisions of the Act of 1852. This is a print of the rules and orders in force at this time (*producing the same. Vide Appendix A.*).

Course of proceeding.—The course of proceeding, on application for the Patent, is as follows:—The petition for the Patent, with the declaration and Provisional Specification attached thereto, is left by the applicant or agent in the Patent office; the same is immediately marked with the date of leaving and consecutive number, sealed with the office seal, recorded, and a certificate of record is given to the applicant. The three papers are referred to the Law Officer, (the Attorney, and Solicitor General, alternately,) for allowance of provisional protection. A Complete Specification may be left with the Petition and Declaration, and the invention is thereby protected without reference to the Law Officer under the Act. The Complete Specification is however referred to the Law Officer, on application for his warrant for the Patent. The number of Complete Specifications average 50 in the year; they were 51 in 1853, and 48 in 1861.

The duty of the Law Officer is to read the Provisional Specification with the title of the invention, and to ascertain whether the invention claimed is properly described therein, also to ascertain that a single invention only is claimed. Should the Law Officer find either Provisional Specification or title, or both, insufficient, he directs the Applicant to attend before him and to amend; 360 in the year (12 per cent., or thereabouts) require amendment at this time. In the first commencement of the Act a much larger proportionate number required amendment.

524. (*Vice-Chancellor Wood.*) Are some of those which require amendment, Patents which have not passed through a Patent agent?—Yes, they are principally those which the inventor himself passes. Those which are generally passed by experienced Patent agents require little or no amendment.

525. (*Mr. Forster.*) Do you know the proportion which do not go through Patent agents?—About 10 per cent.

The Law Officer receives a fee of two guineas on each reference. The fees of the Law Officer on reference for allowance of provisional protection, on the warrant for the Patent, on the hearing of oppositions to the Patent, and on allowance of Disclaimers are regulated from time to time by the Lord Chancellor and the Master of the Rolls under the Act of 1852. (*Appendix A.*)

The papers are returned by the Law Officer to the Patent Office, with his certificate of allowance of provisional protection endorsed thereon, the same is recorded and the certificate that provisional protection has been allowed is given to the applicant.

Provisional protection is thereupon advertised in the Gazette and also in the Journal of the Patent Office.

Notice to proceed for the Patent is given by the applicant, the same is recorded, and a certificate of record of notice is given to the applicant.

Notice to proceed is thereupon advertised in the Gazette and in the Journal of the Patent Office.

The opposition to the Patent before the Law Officer is at this stage, that is, after notice to proceed is advertised in the Gazette.

The notice of objection, stating the ground of objection, is left in the office within 21 days of advertisement in the Gazette of notice to proceed, and a certificate of record of such notice is given to the applicant.

The notice of objection is recorded in the office and forthwith referred to the Law Officer with the original petition, declaration, and Provisional Specification.

The Law Officer hears the case. Should he decide against the Patent, the proceeding drops; there is no appeal in such case. There are not more than 30 to 35 hearings on oppositions before the Law Officer in the year. There is a larger number of oppositions entered, but the actual hearings do not exceed from 30 to 35. There were 119 hearings in 1853 on 3,045 applications; 61 hearings in 1854, on 2,764 applications; and only 28 hearings in 1861 on 3,276 applications. Therefore, the number of applications remaining nearly the same, the number of hearings has fallen from 119, at the commencement of the Act, to 28.

526. (*Mr. Waddington.*) Do you mean by "hearings" when both parties are heard?—When both parties are heard. The Law Officer receives certain fees on hearings of opposition according to the scale settled by the Lord Chancellor and the Master of the Rolls. The rules and orders set out these fees (*see Appendix A.*).

The Law Officer, deciding in favour of the applicant and against the objections, issues his fiat for the warrant, returning the papers to the Patent Office.

In many cases of opposition the hearings before the Law Officer are adjourned from time to time for further inquiry and evidence. The delay caused by these adjournments in many cases either runs out the six months of protection, or runs it so close that an application to the Lord Chancellor for extension of time for sealing the Patent becomes necessary. The Lord Chancellor is empowered under the Act to extend the time. The application for extension of time is by petition to the Lord Chancellor, stating that the delay was caused by adjourned hearings on opposition and appending the certificate of the Law Officer to that effect. The Lord Chancellor is empowered to extend the time for sealing, by the Act of 1852, and also by the Act of 16th and 17th Victoria (1853).

The warrant for the Patent is prepared in the office and sent to the Law Officer for his signature; having received the signature of the Law Officer it is sealed and recorded. The Law Officer receives a fee of one guinea on the warrant.

The opponent failing before the Law Officer may also oppose the sealing of the Patent at this stage of the proceedings. Notice of objection, stating the ground of objection, is left in the office, and is recorded there.

The hearing before the Lord Chancellor is in open court, and by counsel, a clerk from the Patent Office attending. Should the opposition prevail, the Patent falls. The Lord Chancellor on these hearings very often refers the case back to the Law Officer for his opinion; the Lord Chancellor deciding in favour of the applicant orders the Patent to be sealed forthwith.

This proceeding in opposition at the Great Seal is usually by the opponent failing in his opposition before the Law Officer, and by way of appeal, but any other person not opposing before the Law Officer may appear and oppose at this stage. The hearings on opposition to sealing before the Lord Chancellor range from one to five in the year, and no more.

If necessary by reason of further delay in the opposition at the Great Seal, the Lord Chancellor may, on petition, further extend the time for the sealing and filing of the Specification.

The Patent is prepared in the office, sealed with the Great Seal, and dated as of the date of record of the first application for provisional protection. The warrant of the Law Officer is countersigned by the Lord Chancellor, on sealing is returned to the office with the Patent, filed there, and thus becomes the record of the Patent. The Patent being recorded in the books of the office is delivered to the Patentee.

The Specification, in pursuance of Letters Patent, is left in the office by the Patentee, is duly filed and recorded there; and the same, together with the Provisional Specification thereon, is printed and published within 21 days of the date of filing.

The Patent, or a duplicate thereof is stamped with the 50*l.* stamp required by the Act before the expiration of the third year from the date of the Patent, is produced at the office so stamped, is recorded there, and certificate of stamping endorsed thereon. The like on payment of the additional stamp duty of 100*l.* before the expiration of the seventh year from the date of the Patent.

The Provisional Specification is not open to the public until after the Specification in pursuance of the Patent is recorded.

The Patents becoming void by reason of nonpayment are regularly advertised from time to time in the Gazette, and in the Journal.

Every paper and record, Patent and Specification, is marked with the date and consecutive number of the original application for the Patent.

The Act of 1852 (section 35) directs a registry to be made in the Patent Office of all deeds relating to Patents. These deeds are for assignments, licences, partnerships, and other matters relating to Patents. They are generally of great length, have become very numerous, and are increasing yearly in number; 577 were registered in the year 1861.

The deed on being left for registry is recorded under the name, title of invention, date, and consecutive number of the Patent to which it may relate; a full and exact copy thereof is made in the books of the office, and the deed is returned with a certificate of registry endorsed thereon.

The fee paid on registering is 5*s.* only, a sum quite insufficient to cover the cost of copying the deed into the books of the office. This fee ought to be increased to 1*l.* The registry is open at all times to the inspection of the public on payment of a stamp fee of 1*s.*, and a copy of any deed, or an extract from any deed, may be obtained on payment at the rate of 2*d.* for every 90 words.

Entries in the registry may be varied or expunged by order of the Master of the Rolls or a Common Law Judge under the Act of 1852, section 38. Many orders varying or cancelling entries have been made from time to time, and duly recorded. This is a copy of some orders of the Master of the Rolls and Mr. Justice Blackburn, which I may put in (*delivering in the same. Vide Appendix B.*).

Applications for disclaimers of parts of Specifications or memoranda of alterations therein, under the Acts of 5th and 6th William the 4th, 2nd and 3rd Victoria, 7th and 8th Victoria, and the Act of 1852 are made by the petition, either of the patentee or assignee of the patentee, addressed to the Commissioners of Patents. The petition sets out the parts of the Specification desired to be disclaimed, as also the words desired to be substituted as a memorandum of alteration. The petition is recorded in the Patent Office, and is, together with the Disclaimer, referred to the Law Officer.

527. (*Mr. Waddington.*) The petition is not addressed to the Lord Chancellor?—No, to the Commissioners of Patents; it is referred in the office to the Law Officer. The Law Officer hears the case, and if he thinks fit to allow the Disclaimer, or memorandum of alteration, he returns the petition to the Patent Office, with his fiat of allowance endorsed thereon. The Disclaimer, or memorandum of alteration, allowed is recorded in the office, filed with the

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Specification to which it relates, and is forthwith printed and published.

The petition for Disclaimer is referred to the Law Officer, to whom the application for the Patent to which it relates may have been originally referred.

This table shows the number of applications for Patents in each year, from the 1st of October 1852 to the end of 1861, with the several proceedings thereon to the last stage, namely the payment of the additional 100*l.* at the end of the seventh year. (*The witness delivered in the same. Vide Appendix C.*)

Number of Patents under old Law.—The number of Patents for Inventions passed in England under the old law was in 1833, 180, and in 1851, 455. The number had increased gradually year by year, and supposing the old law to be still in force they would doubtless by this time have reached 900 in the year.

Number under new Law.—The number of applications for Provisional Protection under the Act of 1852 commenced in 1853 at 3,045; the number of Patents passed thereon was 2,185; therefore, 860 applications failed, or were dropped in the six months between provisional protection and the Patent. There were 1,211 applications in the three months of 1852, from the 1st of October to the 31st of December. This large number in excess is to be explained by the applications having been held back between the passing and operation of the Act.

No increase since 1852.—There appears to have been no material increase or decrease in the numbers between 1853 and 1859; the numbers within these years remaining at about 3,000, a little over or under. The numbers began to increase in 1861, being in that year 3,276; the largest number in any previous year being 3,200 in 1857. The number in the current year (1862) will amount to 3,500. This increase is, however, to be ascribed to the number of new inventions, for the most part foreign, exhibited at the International Exhibition, the inventors seeking the protection of the English Patent. The applications for Patents during the three months of March, April, and May 1861 were 848, the applications during the corresponding three months of 1862 were 1,101, an increase on the three months of 253. Immediately, however, on the opening of the Exhibition in May the numbers fell to the average of the preceding year, and so continued to the end of the year.

The relative number of applications and Patents passed thereon in 1861 show a decreased number of Patents on the applications as compared to the numbers in 1853. The applications in 1853 were 3,045, and the Patents thereon were 2,185, 860 failing. The applications in 1862 were 3,276, and the Patents thereon were 2,047, 1,129 failing. Therefore the number of applications failing the Patent are at this time over one third.

Additional Payments and Number becoming void.—The Patent is granted for 14 years, and the patentee desiring to keep his Patent in force pays, as before stated, an additional 50*l.* at the end of the third year, and 100*l.* at the end of the seventh year. The beneficial results of these additional payments in the avoidance of a very large number of futile and useless Patents is obvious. Over two-thirds of the Patents sealed become void by reason of nonpayment of the 50*l.* at the end of the third year, and nine-tenths become void, failing the 100*l.* at the end of the seventh year. In 1853 2,185 Patents were sealed, of this number 621 paid the additional 50*l.*, and 205 the additional 100*l.* In 1854 1,876 Patents were sealed, of this number 513 paid the additional 50*l.*, and 140 the additional 100*l.* In 1858 1,954 Patents were sealed, and the 50*l.* was paid on 539 of this number. The proportionate number of Patents becoming void in each year by reason of nonpayment is therefore increasing, but apparently in a greater degree in the second payment than in the first.

In truth the number of Patents really in force under the new law of 1852 is much under the number that was in force under the old law, notwithstanding the

great apparent increase of 2,000 in the year as compared to 450. This great increase commencing at once on the Act of 1852 is to be ascribed to the large reduction in the cost of Patents.

Patents in France.—In France, the charge in fees being an annual payment of 4*l.* only, the number of Patents granted is from 5,000 to 6,000 annually. The French Patent is granted for 15 years, and fails at the end of any year within the term on nonpayment of the annual tax.

In America.—In America, the charge being 30 dollars in the whole, the number of Patents granted in 1860 was 4,819. In 1861 the number of applications for Patents was 4,643; on this number, under the operation of preliminary examination, 1,260 were refused, and 3,383 were granted. It appears, therefore, that a larger proportionate number of applications fail reaching the Patent under the voluntary system in England than in America under the compulsory system of preliminary examination, the compulsory system in America being effected at a great cost.

As to Reduction of Fees.—I am of opinion that the scale of fees on the passing of a Patent ought not at present to be reduced. I think the Patent is quite cheap enough. Were the fees reduced to one half of the present scale, as is proposed by some, the result would be a great increase in the number of useless and futile Patents. Under the present scale of fees many Patents are taken obviously for advertising purposes, and this class alone would undoubtedly be largely increased were a reduction of fees effected.

The large number of Patents passed annually in France and in America is no doubt to be ascribed to the low rate of fees paid thereon.

528. Is the fee in America an annual fee?—In America it is 30 dollars at once.

529. And there is no further fee afterwards?—There is no further fee afterwards. Up to within the last two years they have had in America a differential rate; an Englishman paid 300 dollars, other foreigners paid, I think, 150 dollars, and an American paid 30 dollars; but within the last two years the charge has been the same for all, Americans or foreigners.

Other sufficient reasons may be assigned against a reduction in the scale of fees, at this time at least. The annual surplus, estimated to range from 30,000*l.* to 35,000*l.* will for several future years be absorbed in the cost of the proposed new buildings, namely, the Patent Office, Library, and Museum. The large extension of the Museum and Library necessarily following on the completion of the building will involve a much larger annual expenditure than the sum expended at this time on these two heads. A building fund will also be required for the extension of the building of the Museum, from time to time.

It is also by no means certain that the present flourishing condition of the Patent Office fund should hold good in future years. A continental war would undoubtedly largely decrease the number of imported inventions. In 1861 the number of applications was 3,276, of which 884 were imported inventions, and 2,392 were English inventions. A temporary scarcity of money in England would for the time effect a considerable reduction of numbers, and any material alteration in the law of Patents might have the same effect. The French-Italian war produced a very sensible effect, for the time it lasted, in reducing the number of French inventions imported into England. The last money scarcity had the like effect in reducing the number of applications for English Patents for the time.

530. (*Mr. Forster.*) In 1857?—In 1857.

A reduction of the second and third payments of 50*l.* and 100*l.* to 25*l.* and 50*l.*, as is proposed, would probably destroy the surplus altogether. And if a reduction in addition of 5*l.* were made in the first payment of 25*l.* not only would the surplus cease to exist, but the fund would probably become insufficient

to pay the expenses of the office. The total loss to the fund on these three proposed reductions would, at the present rate of business, amount to 37,000*l.* per annum.

531. (*Mr. Waddington.*) That is, I suppose, if no greater number of persons paid; but if the fee, after three years, for instance, were reduced to 25*l.*, would not more persons pay?—Probably it would be so.

532. And the same with the 100*l.* fee if it were reduced to 50*l.*?—Probably it would have that effect.

533. (*Chairman.*) As I understand you, you are only stating the actual loss which would be incurred, and not taking into consideration any compensating advantage which would be gained by a greater number of persons paying?—Yes. I am not going into speculative matters. If a larger number should pay 25*l.* than now pay 50*l.*, it would in my mind afford a strong argument against reduction.

534. (*Mr. Waddington.*) That would be the object of it, I suppose, if it were reduced?—The object, no doubt, was to reduce the numbers, and to get rid of useless Patents, and it has answered that purpose effectually.

Mode of Paying Fees, &c.—The whole of the fees paid on the passing of Patents are taken in stamps, as also the receipts on the sale of printed Specifications, Indexes, Abridgments, and other works. In this manner the revenue of the office is passed to the consolidated fund, and the sum required for the expenditure of the Office (fees of Law Officers, incidental expenses, salaries, and compensations) is voted annually by Parliament upon an estimate prepared in the Patent Office and submitted to the Treasury.

The money required for the incidental expenses of the Patent Office, Library, and Museum is “imprest” from time to time to the Clerk of the Patents. He passes his accounts with the Treasury and the Commissioners of Audit.

The fees of the Law Officers and the salaries of the officers and clerks are paid quarterly by the Treasury through the Paymaster-General, upon the certificate of the Clerk of the Patents. The printers’ and lithographers’ accounts are paid by Her Majesty’s Comptroller of Stationery, also upon the certificate of the Clerk of the Patents.

The Comptroller of Stationery, also upon requisition and certificate of the Clerk of the Patents, purchases the books required for the library, supplies the stationery used in the office, and the paper required by the printer and lithographer.

Repairs are made and furniture is supplied by Her Majesty’s Board of Works on requisition of the Clerk of the Patents.

An annual report is laid before Parliament, according to the Act, with a balance sheet showing the revenue of the office in stamp duties, and charging against the office in detail every item of expenditure however incurred and wherever paid. These are the returns from 1853 to the present time (*producing the same*). The balance sheet shows a considerable annual surplus in favour of the office, and it is proposed to expend such surplus from time to time in the construction of a new Patent Office, Library, and Museum, and in the future maintenance and extension of the library and museum.

A stamp duty fee of 5*l.* is paid on the Specification; the cost of lithographing each sheet of drawings accompanying the Specification is 5*l.*; the cost of the letter press averages 1*l.* And abuse has arisen in some cases in attaching an immense number of sheets of drawings to the Specifications, useless and unnecessary. In one case (1862–751) 104 sheets of drawings were filed, costing the office in lithographic drawings 364*l.*, and in printing and paper 58*l.*, together 423*l.* These are the drawings (*producing the same*). Here are two other sets of drawings, but not to the same extent; they are the drawings attached to two Specifications for flying machines (*producing the same*). I have taken the largest case,

but there are several others of nearly half the size and cost. I would propose to remedy this abuse by levying an additional 5*l.* stamp on every sheet of drawings beyond the second sheet, thereby throwing the cost of lithographing these superfluous drawings on the patentee. Under the contract with the lithographer each sheet costs 5*l.*

535. (*Mr. Fairbairn.*) The drawings are given in with the Specification?—Yes.

536. Who is at the expense of publishing them in this form?—The Patent Office.

537. (*Mr. Forster.*) You do not think that to carry out your proposition of levying an additional charge for an increased number of drawings would be disadvantageous to good Patents?—No, I propose to commence the extra charge after the second sheet.

538. (*Chairman.*) In order to have this case fairly before us, what would a person who took out the Patent here referred to, and who had these drawings printed at the cost of the Patent Office, have paid to the Patent Office up to that stage?—25*l.*

539. With that 25*l.* so paid by him, his invention, if it be an invention, is printed at the expense of 420*l.*?—Yes, that is the case.

540. Is he supplied with an indefinite number of copies of that Specification or does he pay for them?—He pays for them; the Act permits the Commissioners of Patents to present 25 copies to each patentee, but as the charge for prints is taken at the cost price of printing and paper (averaging 6*d.* each print), the 25 copies have not been given in any case.

541. Am I to understand you that he has a right to claim 25 copies?—No, he has not the right.

542. It is optional with the authorities of the office to grant it?—It is optional.

543. (*Mr. Forster.*) How many copies do you strike off?—250.

544. (*Vice-Chancellor Wood.*) What do you charge for such a Specification as this (1862–751), the drawings of which you have produced?—The price [2*l.* 13*s.*] is marked upon the blue cover; not one copy has been sold.

545. For 2*l.* 13*s.* the patentee could get all he wanted?—Yes, that is the price of a print of the Specification in question.

546. (*Chairman.*) What is the object to the inventor of getting a publication of this sort made at the public expense; if after all he only receives his own copy, what does he gain by it?—I do not know that he gains anything.

547. He gains nothing except the pleasure which it gives him of seeing himself in print?—Probably.

548. (*Mr. Forster.*) I suppose it is not the particular object of the inventor to have it printed, but it is the rule of the office to print every Specification?—Yes, the Act directs all Specifications to be printed.

549. (*Mr. Attorney General.*) Might it not be that a person applying for a Patent might honestly, whether sensibly or not, consider that a vast variety of drawings was necessary for the purpose of fully explaining to the world what he had invented?—No doubt he might think so.

550. Supposing him to be an honest man, and to have no indirect view, he might multiply his drawings for that purpose?—Yes.

551. (*Mr. Forster.*) But do not you think that your suggestion of making him pay after the second drawing might be a heavy tax upon a poor inventor who had a really good invention?—There are very few cases of drawings attached to any Specification extending beyond the second sheet. In the elder Brunel’s invention of the block machinery the whole of the drawings attached to his Specification are contained in one sheet of the size of half a sheet of parchment.

552. (*Mr. Fairbairn.*) Is not this (1862–751) an exception to the general rule?—Yes, it is exceptional, but there are others of one-third of this number.

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553. (*Vice-Chancellor Wood.*) A great many of 30 or 40 sheets?—Several.

554. (*Lord Overstone.*) Do you think that there are a great many cases in which the printing of these plans is carried to a real abuse?—Not a very great many.

555-7. (*Mr. Waddington.*) The object, I suppose, is that the public may have it if they want it at a reasonable price?—Yes.

558. (*Mr. Fairbairn.*) I apprehend that a man taking out such an immense number of Patents has an object in view in doing it, namely, to embrace as many articles as he possibly can in one Patent?—He cannot do that; under the Act of 1852 he can only take a Patent for one invention.

559. Are all these drawings for one invention?—They are.

560. (*Mr. Attorney General.*) It must have been considered to be the subject matter of only one invention before the Law Officer would have passed it according to practice?—Yes, it is the duty of the Law Officer to ascertain that only one invention is claimed.

561. (*Mr. Fairbairn.*) You cannot embody two or three inventions in one Patent?—No.

562. (*Chairman.*) But you give a patentee the unlimited licence of printing what is in effect an unlimited number of illustrations of his invention, is there no check on that?—No check whatever; we are bound to take whatever he chooses to append to his Specification.

563. (*Mr. Fairbairn.*) There are about 250 copies printed?—Yes.

564. Are those copies printed for the patentee and therefore for the public if they choose to purchase them?—Yes, we dispose of about 150 in gifts to the public free libraries of this and other countries, the rest are reserved for sale, reprinting in the case of a particular Specification being sold out.

565. Do you send these prints to the various institutions?—I will state as to that afterwards.

566. (*Mr. Forster.*) Do you think it best to adhere to that number of 250?—We began by printing 500, but we found that number much exceeded the sale; it is much cheaper to reprint when required.

567. Do not you think that you might, with advantage, have the discretion of reducing the number in such a case as this?—In the cost of printing, whether 100 or 250 be struck off, the extra paper makes the difference; 150 are disposed of in the public libraries all over the world, so that 100 only are reserved for sale.

568. (*Mr. Waddington.*) Does not this printing take place by virtue of some Act of Parliament?—It is under the Act of 1852, and the Act of 1853 to amend that Act.

569. Do you recollect what is the section in the Act of 1852 which relates to that matter?—Section 30.

570. There is no option in the Commissioners?—There is no option.

571. (*Vice-Chancellor Wood.*) How is it with regard to the fees, are the Commissioners empowered to raise the fees?—No, the fees are fixed by the Act of Parliament.

572. I do not mean for obtaining a Patent, but for these particular purposes?—The scale of fees cannot be altered except by Act of Parliament; it might be convenient to charge the 5*l.* upon the drawings, rather than the Specification.

573. (*Mr. Waddington.*) The patentee gains this by the printing, that a copy certified by the Queen's Printer is evidence?—The Act 16th and 17th of Victoria, chapter 115, section 4, directs certified printed copies of Specifications filed at the Commissioners' office to be received in evidence. The size of each sheet of drawings is limited by order not to exceed the size of one skin of parchment.

574. (*Mr. Fairbairn.*) You have to reduce them, I suppose?—No; the copies of the drawings are made by tracing.

575. (*Mr. Attorney General.*) Do you think that a patentee, such as this gentleman seems to have been, not able to compress his ideas, might not at a reasonable expense avail himself of the assistance of a draughtsman who would put his ideas into a much smaller compass?—No doubt; a competent draughtsman or a mechanical engineer would have set out all necessary drawings within two or three sheets.

576. There are mechanical draughtsmen who would do it?—Yes.

Patents granted in Foreign Countries and Colonies of England.

Patents for Inventions are granted in the following Foreign Countries and English Colonies and Possessions:

Austria.
Baden.
Bavaria.
Belgium.
Brazil.
Buenos Ayres.
Chili.
Cuba.
Denmark.
Dutch East Indies.
Dutch West Indies.
France.
Germany (Petty States of).
Great Britain and Ireland.
Greece.
Hanover.
Italy.
Mexico.
Netherlands.
New Granada.
Paraguay.
Peru.
Phillippine Islands.
Poland.
Porto Rico.
Portugal.
Prussia.
Roman States.
Russia.
Saxony.
Spain.
Sweden and Norway.
United States of America.
Wurtemberg.
Barbadoes.
British Guiana.
Canada.
Cape of Good Hope.
Ceylon.
India.
Jamaica.
Mauritius.
New Brunswick.
Newfoundland.
New South Wales.
Nova Scotia.
Prince Edward Island.
Saint Lucia.
South Australia.
Trinidad.
Victoria (Australia).

The Act of 1852 (section 18) recognizes the extension of the English Patent to the colonies of England. The subject of extension was considered at various meetings of the Commissioners of Patents from 1852 to 1855; it was decided, considering that a great proportion of the most important colonies had already Patent laws of their own, and that other colonies were proceeding to enact Patent laws, taking the English Act of 1852 as their model, that the English Patent should in no case be extended to the

colonies. In consequence, no English Patent has been extended to any colony under the Act of 1852.

In January 1853, at the instance of Lord Chancellor St. Leonards, a circular despatch was issued by the Secretary of State to the several officers administering the Government of the several English colonies, requiring answers to the following questions:—"What is the present state of the law of the colony under your government as to the powers which exist for the grant of Patents within the colony by the local authorities, and also as to the mode of proving in the colonial courts Patents granted in this country?—Regard being had to the recent 'Patent Act,' 15th and 16th Victoria, chapter 83, and also to the Act 'To amend the Law of Evidence,' 14th and 15th Victoria, chapter 99. Further—What is your opinion, and that of your Executive Council, as to the expediency of the grant of Patents in this country extending to the colony under your government; and what facilities would it be necessary for the Legislature to give (supposing no sufficient facilities at present to exist) for rendering such a Patent available by proof in the colonial courts, in case of infringement of the inventor's rights?"—Abstracts of the several answers of these officers have been made, printed and published with a table, showing in one view the colonies that possess local Patent laws, those having no local laws, and the opinions of the government of each colony for or against the extension of the English Patent.

On the 11th of July 1856 the Secretary of State issued a second circular despatch calling for information as to the form of application to be made by persons desirous of obtaining Patent rights in the colonies, and the expenses attending the Patent. The answers to this despatch have also been abstracted, printed, and published. These printed Abstracts are sold in the office.

Three-fourths of the Patents, Inventions of Englishmen.—Three-fourths of the applications for Patents, or thereabouts, are for the inventions of Englishmen; the remaining one-fourth are for the inventions of foreigners, for the most part Frenchmen and Americans. The country in which inventions are of the highest value will draw inventions to it from all others, and so long as any one country protects inventions by Patent, so long must all countries protect. Were England to abolish protection of inventions, inventors would carry their inventions to other countries. Switzerland does not protect, and consequently the Swiss take their inventions to other countries. John George Bodmer, a native of Switzerland, has made numerous inventions, patented by him in this country, many of them of the highest value. The subjects of his inventions are in grates, stoves, and furnaces applicable to steam-engines; boilers; spinning machinery, and preparations of the raw material; apparatus for cutting, drilling, planing, turning, and rolling metals; machines for propelling vessels; locomotive and stationary engines; tires for railway wheels, &c. &c. &c.

Preliminary Examinations.—There is a proposition for the appointment of a number of "Preliminary Examiners," consisting, as it is understood, of one or two mechanical engineers, one or two experimental chemists, and one or two barristers. These examiners to sit in private, and to read, examine, and decide in private whether A.B. is to have his Patent or not, thereby altogether superseding the functions of the Great Seal and the Law Officers in granting Patents, as also in a great measure, the functions of the courts of law in trying Patent rights, and questions after grant of Patent.

The opinion of the great majority of inventors, engineers, and others, who have considered the subject, and are competent to form a true opinion, is I believe against any such institution. I do not believe that 20 examiners could do the work which would be imposed upon them. For instance, in an

application for an invention in textile fabrics the examiner would be required to read and consider at least 1,500 Specifications, as well as every book published on the subject; this would employ him several weeks, and in the end he might possibly altogether miss the point of novelty or utility.

Inventor the true Examiner.—In my opinion the competent examiner is the inventor himself, and were it possible he should be forced to read and examine *before* application for protection. That he does read and examine, to some extent, *after* protection is proved by the voluntary failure of more than one third of the applications in the six months between protection and the Patent. Every inventor has opportunities of examining and reading his subject. He may find the material at hand, not only in the Public Library of the Patent Office, but in almost every public free library in the United Kingdom, in the capitals of most foreign countries, and in all the principal colonies of England. Numerous inventors inquire at the Patent Office, either in person or by letter, the course they ought to take to ascertain the novelty or otherwise of the invention they propose to patent. They are advised to read and examine in the library all Specifications on the particular and similar subjects, as also everything that may have been published on the particular subject. It is quite certain that one half at least of these persons, taking the course advised, have found themselves anticipated, or so nearly anticipated, as to decide them not to waste their time and money upon a useless Patent.

577. (*Vice-Chancellor Wood.*) You index the Patents under heads, do you not, so as to facilitate reference?—Yes; I am going into that subject by and by. This is a circular sent in answer to applicants asking for advice; it affords a great deal of information, and also directions for their conduct. (*The witness delivered in the same. Vide Appendix D.*)

Preliminary Examinations in Prussia.—In Prussia, where comparatively few Patents are granted, the system of preliminary examination has not been found satisfactory, either to the Government or the applicants, it, however, still exists.

In America.—In the United States, Judge Mason, late Commissioner of Patents, reports against preliminary examination. I believe Mr. Woodcroft gave in Judge Mason's report on his examination.

In France, &c.—In France, Austria, Sardinia, and Belgium preliminary examination has been tried; in each country it has been abandoned.

After Patent granted and the Specification made public, the eyes of the whole mechanical world in the department of art to which the invention may belong are brought to bear upon it; by this means it is readily discovered whether the invention possesses novelty or not. Were a tribunal established for the investigation at a reasonable cost of all questions of novelty or infringement after Patent granted, with power to supersede the Patent, if found devoid of novelty, an effective cure would be afforded, and both the Patentee and the public would be efficiently protected.

Cost of Preliminary Examinations in America.—The cost to the Government in America on preliminary examinations amounts to a larger sum annually than the cost in England of printing and publishing all the Specifications of Patents, Abridgments of Specifications, and all other works published in the Office. The cost in letter-press printing, lithographic printing, and paper amounted in 1861 to 16,211*l.* The salaries of the corps of Examiners in the American Patent Office amount in the aggregate to 25,000*l.* per annum. It is so stated in their Reports. I believe also that these Examiners go out of office with the Government.

Printing of Specifications, &c., in Patent Office.—The Act of 1852 directed all Specifications of Patents filed in the Office under the Act to be printed and published; this is done regularly, within 21 days of the filing of the Specification, together with litho-

L. Edmunds,
Esq.

17 Dec. 1862.

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graphed copies of the drawings, accompanying the same. This work of publication commenced immediately on the passing of the Amendment Act, 16th and 17th of Victoria (20th August, 1853). The Specifications of all Patents under the old Law from 1611 to 1852 (13,561 in number) have also been printed and published. This work was not directed by the Act, but as the printing the current Specifications was manifestly of little use, leaving the 13,561 old Specifications hidden on the Rolls of Chancery, it was determined to complete the work. The printing of the old Specifications was commenced in 1854 and completed in 1858. Altogether 43,563 Specifications (13,561 under the old law and 30,002 under the new law) have been printed up to this time (December 1862). The printing of the old Specifications cost 95,000*l.* The prints are sold at the Office at the cost of printing and paper, the average price being 6*d.* The average cost of printing a Specification in lithography and letter-press is 6*l.*; 5*l.* for the lithography and 1*l.* for the letter-press.

Abridgments of Specifications.—Abridgments (in classes and chronologically arranged) of all Specifications, from the earliest date to the present time, are in course of publication and sale in small duodecimo volumes. Each subject contains a preface, and at the foot of each abstract references to notices of the invention in scientific and other works, and reports of law proceedings on Patent questions. These abstracts are compiled either by gentlemen at the bar or by scientific persons conversant with the particular class of invention. A fee of 7*s.* is paid upon each abstract.

A list of the Classes already published is given in Appendix D. to my evidence.

Copies of Specifications made Evidence.—Printed copies of Specifications issued from the office, sealed and certified, are admitted in evidence in all Courts within the United Kingdom, without production or proof of the originals, under the Act of 1852.

Indexes of Specifications.—Mr. Woodcroft had, some years before his appointment in the office, compiled for his own purposes, copious indexes of all Specifications of Patents, from 1611 to 1852, in four different forms, an Alphabetical Index, a Chronological Index, a Subject-matter Index, and a Reference Index; a work of great labour and accuracy. This work was purchased of Mr. Woodcroft in 1853, and was immediately printed, published, and sold. The Indexes are continued annually in the same form, and are also printed, published, and sold.

The number of separate entries in the Indexes amount altogether to 330,525. On referring to these Indexes, any Specification upon any subject, from the earliest date to the present time, may be found in a very short time, and a printed copy purchased in the sale room.

Patent Office Journal.—A Journal is published in the Patent Office twice in the week, (Tuesday and Friday), containing notices of applications for Patents, and grants of provisional protection, notices of applications at the Privy Council Office for the prolongation of the term of the Patent, notices of Disclaimers, Patents sealed, Patents on which the progressive duty of 50*l.* and 100*l.* has been paid, Patents void by reason of non-payment, Patents granted in France, America, and other foreign countries, and various other notices relating to proceedings in the office, to sales of publications, the public libraries in which they are to be found, and a great amount of miscellaneous information for the benefit and guidance of inventors and patentees. Translations of the titles of foreign Patents are made for the Patent Office Journal, and are regularly published therein.

578. Does that Journal pay for its expenses?—The sale is large, and it nearly repays the cost.

Sale of Prints.—The sale of prints of Specifications, Indexes, Abridgments of Specifications, and other

printed works in the Patent Office, produce 1,800*l.* per annum, and the sale is increasing.

Free Library in the Patent Office.—A free library has been established in the Patent Office, open to the public every day from 10 to 4 o'clock, containing the printed Specifications, Indexes, Abstracts, and other works published in the Patent Office, together with a large and valuable collection (increasing daily) of English and foreign works, journals, and text books in science and art.

The publications of the Patent Office are also to be found at the Patent Museum, Kensington, in the libraries of the British Museum and the Society of Arts, and are given to the Free Public Libraries of Public Offices, Universities, Societies, British Colonies, and foreign countries, a list of which is set out in Appendix D. to this my evidence.

579. (*Mr. Fairbairn.*) In your Free Library you are not limited to Patents, but you have other works?—In the Free Library we have every work in science that we can procure, and the number is daily increasing. We have not sufficient room at present.

580. These works are all classified and arranged?—Yes, and with proper catalogues. The Foreign countries receiving the publications of the Patent Office, give their publications in exchange for the use of the Patent Office Library.

Surplus Income of Patent Office.—Notwithstanding the great outlay in printing, and the cost of the establishment of the Patent Office, the Library, and the Museum, there is shown upon the balance sheet of income and expenditure in the annual report to Parliament an annual surplus ranging from 30,000*l.* to 35,000*l.* It is proposed to expend this sum, or a considerable portion thereof, in the purchase of a proper site, and in the construction of a new Patent Office, Library, and Museum.

Building of New Patent Office, Library, and Museum.—A report to that effect was made by the Commissioners of Patents to the Treasury in April 1858, and this report was forthwith referred by the Treasury to the Board of Works, with instructions to proceed thereon. A site for the office was found early in 1859, within the gardens of Burlington House, and plans and estimates were prepared. This plan was, however, set aside by the Government in 1860. It formed part of a great plan for the appropriation of the whole of the site of Burlington House to various purposes.

A second report was made to the Treasury in August 1862, on this subject, pointing out a convenient site in Fife House Gardens, Whitehall. This is a print of the report of 1862; it recites in detail the report of April 1858 (*delivering in the same. Vide Appendix E.*).

Trial of Patent Questions.—The expensive, dilatory, and unsatisfactory mode of trying Patent rights and questions calls for amendment.

It might be supposed that the large increase in the number of Patents granted (2,000 at this time as compared to 450 in 1851) would have increased the amount of litigation in the same ratio. Litigation has, however, not increased; no doubt one of the beneficial effects of publication.

It appears from this return from the Petty Bag Office that only three Patents have been superseded under the writ of *scire facias*, and only 11 writs of *supersedeas* issued since October 1852 (*delivering in the same*).

I am of opinion that the patentee should be put upon his defence at the instance of any one who might think proper to attack his Patent on the ground of want of novelty, placing himself in the position of plaintiff, at the penalty, however, of costs, should he (the plaintiff) fail in superseding the Patent, and at the cost of the patentee should he fail in sustaining his Patent,—the plaintiff giving sufficient security for costs.

I would propose to try all questions upon Patents and Patent rights within the United Kingdom in the

Court of Chancery, abolishing jury trials and the Courts of Common Law altogether, as relating to Patent questions; the proceedings in all cases to be by petition, and to be heard, in the first instance, by the Master of the Rolls or a Vice Chancellor, with an appeal to the Lord Chancellor or the Lords Justices; the Master of the Rolls or Vice Chancellor at the hearing to call in, if he shall think fit, one, two, or three assessors to sit with him and advise, in the manner in which the Masters of the Trinity House sit and advise the Judge of the Court of Admiralty in shipping causes. A very efficient list of assessors may be formed from the body of scientific men, mechanical and civil engineers, and experimental chemists. I would exclude, however, from the list all professional witnesses and all having an interest in Patent rights.

The case of *Betts v. Menzies* is an illustration of the unsatisfactory state of the law for the trial of Patent rights. The invention was for "A new manufacture of capsules, and of a material to be employed therein." The litigation first commenced in Chancery and at Common Law in 1857, and is still depending. The writ of error in the House of Lords, the last operation, was heard and judgment given in the last session (1862), reversing the judgment of the Exchequer Chamber. The effect of the reversal is again to open the litigation at Common Law. In the meantime the Patent of the plaintiff *Betts* expires in January next, and on his application for a prolongation of the term of 14 years at the Judicial Committee of the Privy Council his Patent has been extended five years.

The costs in this case of plaintiff and defendant in the several proceedings in the several Courts (Chancery, Common Law, and House of Lords) amount altogether up to this time to the enormous sum of 26,357*l.*; namely, plaintiff's costs, 15,267*l.*, defendant's costs, 11,090*l.* Mr. Sparling, the solicitor for the plaintiff *Betts*, has furnished me with this statement, being a detail of the several proceedings in Chancery, at Common Law, and in the House of Lords, with the actual costs of the plaintiff, and an estimate of the costs of the defendant in each step of the proceedings (*delivering in the same. Vide Appendix F.*).

Heath's case is another remarkable instance of protracted litigation at great cost. His invention was for an improvement in the manufacture of steel, turning upon the use of carburet of manganese. The Patent was granted in 1839. The litigation commenced in 1842, was carried through several courts, and ended at last in the House of Lords in 1855. See Webster's "Case of Josiah Marshall Heath,"

(a separate publication), with introductory observations, published in 1856. The costs in this case, plaintiff and defendant, together amounted to at least 15,000*l.*

Prolongation of term of Patent by Privy Council.—The Act of 5th and 6th of William the Fourth enables the Judicial Committee of the Privy Council to extend the term of a Patent to a further term not exceeding 14 years. The Judicial Committee being a special Court, the fees and costs are consequently very heavy. This power of extension may be beneficially transferred to the Lord Chancellor or Lords Justices.

Patent Agents.—The Patent agents have become a numerous body, but they are under no discipline or control whatever, either as to conduct or capacity, Barristers and solicitors, on call or admission, undergo severe examinations to test their capacity, and on proof of misconduct the barrister is disbarred and the solicitor is struck off the roll. Solicitors take annual certificates, paying an annual stamp duty thereon. The bench of the Inn to which the student may belong examines him to test his legal capacity; the Incorporated Law Society examines the attorney's clerk for admission in like manner, under the Act of the 6th and 7th of Victoria.

I would suggest that all Patent agents hereafter admitted to practise in the Patent Office should undergo an examination by the Incorporated Law Society to test capacity, the Society being empowered to call in one or more mechanical engineers to assist in the examination. That Patent agents should be formally admitted to practise in the Patent Office by the Master of the Rolls, on certificate of the Incorporated Law Society, as solicitors are admitted in Chancery. That they should take an annual certificate. That lists of certificated Patent agents be published, together with suspensions and removals. The Lord Chancellor or the Master of the Rolls, on proof of misconduct in the agent, to suspend him for a time from practice in the Patent Office, or to exclude him altogether by striking him off the roll of agents. All solicitors and attorneys duly admitted, and taking the annual certificate of attorney or solicitor, to be allowed to practise in the Patent Office without further examination or certificate. Patent agents actually practising in the Patent Office at this time not to be subject to examination, but all to be duly admitted, to take annual certificates, and to be subject to suspension or dismissal. I am informed and believe that the Patent agents as a body are favourable to discipline and admission to practice, as proposed.

The witness withdrew.

Adjourned.

Tuesday, 27th January 1863.

PRESENT :

The Right Hon. LORD STANLEY, M.P.
The Right Hon. LORD OVERSTONE.
The Right Hon. SIR WILLIAM ERLE.
VICE-CHANCELLOR SIR W. PAGE WOOD.
SIR W. ATHERTON, Q.C., M.P.

SIR HUGH CAIRNS, Q.C., M.P.
HORATIO WADDINGTON, ESQ.
W. R. GROVE, ESQ., Q.C.
W. M. HINDMARCH, ESQ., Q.C.
WILLIAM FAIRBAIRN, ESQ.

THE RIGHT HON. LORD STANLEY IN THE CHAIR.

WILLIAM SPENCE, ESQ., examined.

581. (*Chairman.*) You have been a Patent Agent, I believe, for many years?—For upwards of 23 years.

582. Are you at present actively engaged in that profession?—Yes.

583. Have you received a copy of the printed questions which have been prepared by the Commissioners?—I have not received them, but I have seen them.

L. Edmunds,
Esq.
17 Dec. 1862.

W. Spence,
Esq.
27 Jan. 1863.

W. Spence,
Esq.
27 Jan. 1863.

584. Have you formed any opinion as to the propriety of increasing or diminishing the cost of obtaining Letters Patent, and also as to the manner in which payment should be made, that is to say, whether the payment should be made in one sum, or by instalments?—The only suggestion that I can make on that point is as to the time within which the payment of 50*l.* and 100*l.* must be made. Instead of, as at present, the payment of 50*l.* being made at the end of three years (and which is practically only two years and a half of enjoyment of the right), I would suggest that it should be made at the end of five years.

585. You would extend the time from three years to five years, so that a Patent, however worthless it might be, should run for five years on payment of the small preliminary expenses?—Yes, but these expenses are from 40*l.* to 50*l.*

586. Will you be kind enough to give your reasons to the Commissioners for wishing that change to be made?—Because I think the present period of payment comes too early to allow the commercial value of the Patent to be adequately tested.

587. You think that cases exist in which a Patent may be really valuable, and yet at the expiration of the three years it has not yielded a sufficient return to justify the Patentee in investing the sum of 50*l.* for the sake of continuing it?—I do; I think that such is frequently the case, in consequence of the Patentee being without sufficient capital to urge on his manufacture.

588. Does it not, always happen that, if a Patent is once taken out and secured, or supposed to be so, although the Patentee may not have capital himself, he will be able to find some one possessing capital to assist him?—Not always.

589. Do you not think that any public inconvenience would arise from a prolongation to the extent you have mentioned of Patents which are practically worthless?—I think not, I think that in the competition of ordinary business they would get lost sight of.

590. (*Mr. Fairbairn.*) Do you think that an extension of the time would afford any relief to the Patentee?—I think so.

591. In what way; suppose, for example, the Patentee was a poor man, how would it benefit him?—It would give him a longer time to get a chance of raising some capital upon the invention, or of obtaining some help in making it profitable.

592. (*Lord Overstone.*) In the case of a poor Patentee who was unable to bring his Patent into active operation through his own resources, would not the necessity of providing for the payment of the 50*l.* at the end of the three years stimulate his exertions to find some person who could assist him with the necessary capital?—It might stimulate his exertions, but I think that in many cases those exertions would fail in producing the necessary capital in time.

593. On the other hand, do you not think that the postponement of that payment would be calculated to induce a poor Patentee to remain inactive, and cause his Patent, therefore, to remain a dead letter and unprofitable to the public for a long time?—As far as I have been able to judge from the instances which have come under my observation, I should say that the balance of convenience was in favour of giving assistance to the Patentee in the way proposed.

594. Is it not the fact that those cases only attract your attention in which the Patentee has remained inactive for want of adequate capital, but that those cases in which the efforts of a poor Patentee has brought forward the necessary capital no longer attract notice?—Yes, I quite think that that is the case.

595. (*Mr. Grove.*) Have you found in your experience that the cheapness of Patents has induced a number of poor people to give up their normal trades

and occupations, and that that has led them to dangle for some years after an imaginary invention, or at all events an invention of very little value?—Yes; I am by no means an advocate for cheap Patents.

596. Would it not increase the cheapness of a Patent if you postponed the second payment to the end of five years, giving in that way the Patentees five years to play with their inventions without any additional payment being made?—Of course it would cheapen it to that extent, but there would still be the outlay at first of 50*l.*, for you must reckon 50*l.* in round numbers before you can get a Patent with agent's fees.

597. (*Chairman.*) Assuming the change you have suggested to be made, have you any objection to the further payment of 100*l.*, which is now made at the expiration of seven years?—I would make it payable at the end of the ninth year.

598. You do not propose to commute those two payments of 50*l.* and 100*l.* respectively for an annual tax?—No; as a Patent agent I should prefer all the payments at first; attending to the subsequent payments forms the most unpleasant and responsible part of our business as agents.

599. Will you be good enough to explain that a little?—There is often a difficulty in getting the document back from the Patentee, and of making him understand that we want that as well as the amount, and notwithstanding that we fix a period beyond which we cannot receive the money, we are always kept, so that we are afraid frequently to leave the office when it is coming near the time.

600. In your opinion ought there to be any preliminary investigation of a more searching character than there is at present before a Patent is granted?—No, I think not.

601. Are you satisfied with the present mode of granting a Patent in the first instance?—May I ask what I am to understand precisely by that question.

602. It has frequently been suggested that there ought to be something in the nature of a tribunal to investigate the merit of a Patent, both its novelty and utility before a Patent is granted?—I should quite oppose that; I think it is much better as it is.

603. (*Mr. Fairbairn.*) In order to get rid of frivolous inventions, or inventions of no value, would it not be advantageous if some preliminary investigation into the novelty of the invention were made?—I am afraid it would be impracticable to work that.

604. For what reason?—Because I think that an invention, or an alleged invention, however you may please to term it, is scarcely in a sufficiently tangible shape to be dealt with to that extent. There is to an extent a preliminary investigation now, inasmuch as it is the duty of the Law Officer of the Crown to see that a proper Provisional Specification is put in, and he has power to refuse the application for a Patent unless he is satisfied herein.

605. And there is the power to refuse a Patent at the end of seven years?—The Patent expires at this period if the payment of 100*l.* be not made.

606. Would not a closer investigation into the merits of a Patent before it was granted relieve the Office of a considerable amount of trouble and responsibility?—Not an extensive closer investigation, for I think there would be this evil in it, that when a Patent was granted it would be considered that having passed, that was a sort of guarantee for its utility and its novelty.

607. (*Lord Overstone.*) You think that a Patentee is the best judge in the first instance of the utility or novelty of his Patent; he forming that judgment subject to the consequences of judging erroneously?—I think that the present system of taking the grant upon his own responsibility as to all those points is the best.

608. You think that no better mode of testing in the first instance the utility or novelty of a Patent can be suggested than that which now exists, throwing upon the patentee the responsibility of forming

an erroneous judgment?—I think not taken with the power of supervision and the Provisional Specification and assuming it to be properly dealt with.

609. By proper supervision do you mean the present mode of supervision?—Yes.

610. (*Mr. Grove.*) I presume you constantly come in contact with inventors?—Yes.

611. Have you had any opportunities of seeing tradesmen who have complained of being impeded in their business pursuits by threats of actions from patentees?—I have heard of such cases.

612. Have you ever heard of a case like this, where threats have been made with regard to a matter which, although a tradesman might believe it to be without novelty yet the cost of litigation would prevent him from contesting it, and the party has been obliged to succumb?—I have heard more of the annoyance than of the fact of succumbing to a threat.

613. (*Vice-Chancellor Wood.*) Can you suggest any mode in which any preliminary investigation could be otherwise than *ex parte*?—No, I think not.

614. You could not devise any other scheme without frustrating the whole object of the Patent?—I think not.

615. (*Chairman.*) May we take it as your opinion that, subject to the slight alteration which you would propose, the present mode of granting Patents is satisfactory, that no public inconvenience has been or is likely to be caused by their multiplication, and that they ought not to be refused merely because it is considered that inventions will be taken out of a trifling or frivolous character?—Quite so.

616. (*Mr. Hindmarch.*) Have you ever found any inconvenience arise from the custom of permitting Patents to be taken out for foreign inventions?—I have had very little experience in foreign business but I can speak to this point, that the Americans have complained occasionally of the looseness, as they call it, of our practice, which has the effect of encouraging persons to prowl about the Patent Office at Washington, whence they in fact run a race for a Patent here. Such Americans appear to think that we ought to have a guarantee that the person applying for a Patent has an authority from the inventor or proprietor.

617. Do you consider that greater facilities ought to be given than at present exist for the repeal of invalid Patents?—Yes; I think so. I think that is required as a sort of balance to the present system of granting a Patent on the allegation made by the applicant.

618. That is to say, they are granted with next to no inquiry. Do you think that greater facilities should be given than exist to dispute the validity of Patent?—Yes, I think so.

619. How do you think that ought to be done?—I think there ought to be an open trial.

620. There is a power of trying Patents at the present time by *scire facias*?—But it is a very long process.

621. What fault do you find with the present mode of procedure when any person endeavours to obtain a repeal of an invalid Patent, and what simplification in that procedure do you propose?—The existing procedure relates to Patents I apprehend of all kinds, whether for inventions or any grant of Letters Patent, and for that reason there is a course of procedure which is common to all, and may be useful and right in some cases; but that does not apply to Patents. I think there should be in the first instance a simple lodgment of a statement of the objections, as in the case of an ordinary opposition. Then the fiat of the Attorney-General or other Law Officer might be granted for the trial if a *prima facie* case were made out.

622. (*Sir Hugh Cairns.*) It does not apply to Patents for inventions?—No.

623. (*Mr. Grove.*) The great expense under the

present system of repealing Patents is the cost of the actual litigation?—Quite so.

624. Have you any plan to suggest by which you think the costs of litigation could be avoided; suppose the case of a party having a large commercial interest and wishing to upset a Patent, with large funds at his command, and being able to call many scientific witnesses, the patentee must either yield or meet the case with something like a similar weight of evidence, how can that be got rid of?—It has appeared to me for some years that we have been getting into an artificial mode of trying these cases by an excess of scientific evidence.

625. Can you suggest any mode by which that evil can be remedied?—I think that if the Court had some ostensible scientific aid from men of science, who would be made use of to act in the way of eliciting evidence from workmen, it would be beneficial; the workman is too much lost sight of, and the opinion of the scientific witness is unduly exalted; for as it appears to me, he leads the Court instead of coming in afterwards to speak to the facts which have been established by practical witnesses.

626. (*Mr. Fairbairn.*) You prefer the evidence of practical men to that of scientific men?—Yes, I do. The only case in which I ever had any considerable experience of arbitration in a Patent case certainly tended to confirm me in that preference. In that case only practical workmen, and the directors of those workmen, were present as witnesses, the arbitrators and umpire being all Patent Agents.

627. (*Mr. Grove.*) Suppose the case of two parties who raise an issue and whose interest it is to impede and obstruct one another; those parties have, or one of them has, funds at his command, and it is thought more desirable to have scientific evidence because it produces a greater effect upon a jury, you could not, I suppose, by any law, prevent them from having that scientific evidence?—No, but I think it produces more effect upon juries than upon the Court, especially assuming the Court to be strengthened by the aid of scientific assessors.

628. Then your answers have reference rather to the question of a tribunal for trying all cases?—Yes.

629. (*Sir H. Cairns.*) Putting aside for a moment tribunals, you say that you see objections to the preliminary investigation, but you think that as on the one hand, a patentee should be allowed to take his Patent on his own responsibility, he should be exposed only to an inexpensive method of having his Patent afterwards challenged?—Yes.

630. Have you at all thought of the means of bringing about cheapness and facility in the method, or how you would improve on the present mode of procedure by *scire facias*?—Perhaps by preparing an issue to be tried, and statements of the case for the plaintiff and defendant respectively; the terms of the document for the purpose to be allowed by an officer of the Court.

631. What is the great element of expense according to your experience when parties proceed by *scire facias*?—I think that the artificial mode of trying Patents generally arises from a great desire, in the first instance, to import as much scientific evidence into a case as is possible, and to make the most of any ambiguities in the Specification; and I think that there is an excess of appeal, I should be an advocate for making the judgment of the Court, as to the Specification on all points, except novelty, final.

632. (*Mr. Attorney-General.*) Upon mere questions of law, apart from any matters of fact, you would propose to make the judgment of the first Court, that should take cognizance of the question, final?—Yes.

633. In what way would you leave open to appeal the matters of fact, such as the novelty and utility?—The utility does not appear to me to require any dealing with in that way, because the Patent is assumed to be useful, or it would not be contested.

634. You are aware that in opposition to an exist-

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ing Patent, the objection is frequently made that the invention is not useful?—Yes; but I do not think it is the case when it comes to ultimate trial, at least not now.

635. Does not the question of utility go to a jury?—That has not so much been the case in recent years.

636. Then take the question of novelty, would you leave that as a matter of fact, open to appeal from one jury to another?—No, it should come before the Court again.

637. That is to say, to go again to a second jury?—I do not propose to have a jury in the tribunal.

638. Not in Patent trials at all?—No; not at any rate as a rule. There might be possible exceptions to the rule.

639. Would you propose that Patent cases on all matters of fact should be tried by a Court without a jury?—Yes, by a Court composed of a presiding Judge, with scientific assessors when considered necessary by him.

640. Have you considered what Court it should be, whether a Court of Common Law or of Equity?—I have not considered that question, so as to be able to give a decided preference for the one over the other.

641. (*Chairman.*) Do you conceive that Patentees would be better satisfied to have cases tried before a Judge alone than before a Judge and a jury?—I think before a Judge alone, at least a Judge with other assistance if he pleases to call for it; I mean that our existing system should be extended, for I think there is nothing so good as the existing system in that respect, the Law Officer being entitled to call to his aid such assistance as he may require, to be independent of it if he thinks fit, or to avail himself of it if he pleases.

642. Do you think that in cases of suits instituted by Patentees much public inconvenience arises from the inevitable ignorance of the jury as to the subjects on which they are called upon to decide?—Yes, I think so; I think it has an effect upon the Specifications, a sort of reflex action upon them. I am afraid that many ambiguous phrases are put in on purpose to be managed well in the trials afterwards. I know that I have had to resist their introduction myself in some instances.

643. Will you be kind enough to explain that a little?—I think that the possibility of a chance arising of acting upon the jury through the capability of a scientific witness will influence men sometimes to say a great deal more than they mean, that is to say, to advance a proposition which they really are not prepared to substantiate at the time.

644. (*Mr. Fairbairn.*) Do you think that a Patentee would be equally well satisfied to have his case decided by a Judge instead of by the verdict of a jury?—Probably not until experience had shown him that he gained more, in the long run, than he lost by speedy decisions.

645. Is he not a party to be consulted in the question?—Patentees, who do not believe, as I do, that after a length of time it would produce good results to society, would be very likely to think that it would be injurious to them. I think that the slowness of the proceedings, and the power which men of capital possess to swamp the smaller men, is a great encouragement to occasional acts of oppression.

646. Would there not be some difficulty with respect to the Judge in many cases that come before him, that he might not be competent or possess sufficient knowledge to enable him to decide, and in such cases would he not require competent persons to advise him?—Yes; but my own belief is, assuming the Judge to be a first-rate lawyer, and a man of standing, that there is not a case that he could not deal with, assuming that the facts were brought before him in a trustworthy way, or the proportions of the facts, for that is the difficulty at present, to get out from scien-

tific witnesses the exact proportions of their statements in what they depose.

647. But there would be some difficulty, would there not, however intelligent a person might be, for example, if he were not scientific, when a case came before him that required scientific evidence, would it not be difficult to impress a person of that description with the true and just principles of an invention?—Yes; but taking into account Patent cases generally, I think no kind of person or persons could deal so effectually with the true and just principles of inventions as a superior legal Judge assisted by scientific assessors.

648. Suppose, for example, that a Judge was not conversant with a subject that required scientific evidence, he would require, would he not, to be advised by some person who possessed sufficient knowledge to guide the Judge in order that his decision might be a just one?—Yes.

649. Then the question is whether it would not cause difficulties, and whether Patentees would be as well satisfied or not?—I do not think that it would cause difficulties if scientific men were called in as assistants to the Judge. There was a proposal, I think, of that kind, which was alluded to in the Report of the Special Committee of the Law Amendment Society on scientific evidence in Courts of Law, and that appeared to me to be the right principle. In a letter that I wrote to the engineer, I used words to this effect: "On this point, it appears to me that the plan suggested is the right one. The proposer of the plan wished to see the responsibility always remain with one man. Then where there is responsibility there must be control, so the Judge who tried the case was to be responsible for the decision, but was to have such assistance in forming that decision, as he could derive through the medium of an assessor." Then it was mentioned in another place that "Assessors should be appointed, who should sit with the Judge, and should be bound to give their opinion in public as well as the reasons on which that opinion was formed." That being so, it would show their position, they would be in a responsible position, but not in one at all conflicting with the Judge, and there would be a more perfect record of the science than we now have.

650. (*Sir W. Erle.*) Does that assume that the opinion of one Judge should be final without appeal?—No, the question of appeal was not touched there.

651. (*Vice-Chancellor Wood.*) If you suppose that there should be assessors, ought there to be in your opinion a permanent staff, or do you mean that the Judge should be assisted from time to time, when he thought fit, by selecting some independent person for the occasion?—I do not mean a permanent staff, but that the Judge should be quite at liberty, as he is now, to obtain assistance or not, as he might think fit.

652. (*Chairman.*) Then as I understand your proposal, the assessors so called in would in fact be witnesses, but they would be witnesses called by the Judge, not called by either of the parties, and therefore not giving their evidence as it is now feared scientific witnesses often do, with a strong bias on either side?—Quite so; they should be assistants to the Court in that respect, and also to elicit the practical evidence.

653. Is there not at present power in the Court of Chancery to call in scientific evidence?—Yes; and that is the principle that I should like to see extended.

654. (*Lord Overstone.*) Do I rightly understand you that it has come within your observation and experience that much laxity in the preliminary proceedings arises from a calculation upon the imperfect knowledge of the tribunal before which the matter is ultimately to be tried?—Decidedly. I think that some of the observations in Specifications that are thrown in by the way are so thrown in with a purpose.

655. It is your opinion that if the tribunal was rendered more intelligent we should obtain not only greater certainty of arriving at justice, but we should arrive at it by a more simple and shorter process?—Yes.

656. (*Mr. Hindmarch.*) Do you mean that doubtful expressions are inserted in Specifications with the intention of taking advantage of them afterwards?—Yes.

657. And also doubtful claims?—Yes.

658. Claims are expressed in ambiguous language?—Yes; I think that the existing system in that way is a premium upon ambiguity.

659. (*Sir W. Erle.*) Are you aware that the construction to be put on the language of the Specification is for the Judge?—I am, and for that reason I wish to see him adequately assisted.

660. It would be then in his department that you would require a higher intelligence than is to be found in the judicial department, because words of science are not for the jury?—No, but the consequence of the Judge being without scientific aid is that he declines to construe a Specification, particularly at the first trial.

661. Have you divided the different classes of questions that arise upon Patent trials, for sometimes it is a question of scientific improvement, sometimes it is a mere question of one witness affirming and another denying that a thing has been practised in a certain factory, and there are other classes of questions. Are you of opinion that there ought to be a different kind of tribunal for the different classes of cases?—I think that a similar principle worked out fully would reach all cases as far as they can be reached, but there is undoubtedly an inherent difficulty in the variety of the cases. Still this remark is applicable to other departments of legal practice.

662. (*Mr. Grove.*) What class of persons do you suppose would be open to be selected for assessors, do you mean persons who had discontinued to practice as scientific witnesses or men who were actively engaged in that way?—I think that would depend very much upon the kind of question that arose.

663. I suppose you would hardly take a scientific man who was quite unacquainted with the administration of the Patent Law, and that you must have a man of some experience in what are called the tricks and the mysteries of the process?—Yes; but the main use of an assessor is to get out the fact of the proportions of the invention from a more practical class of witnesses than are now usually employed. It is found by Patentees to be difficult to get out their evidence and to start a case, and to work out the hypothesis, that is to be worked out, without the aid of the class of people called experts.

664. (*Lord Overstone.*) By whom do you think the assessors ought to be selected and appointed?—They should be called by the Judge.

665. Is he to select such persons as he may desire for his own information?—Yes, it might be possible to require sometimes quite practical men, and at other times more scientific men.

666. (*Mr. Waddington.*) As I understand you, you would leave it entirely in the discretion of the Judge to call in assessors or not?—Yes.

667. (*Chairman.*) Your leading idea I think is this, that the Judge should be responsible for the decision of the Court, but that it should be a decision without appeal, and in order to make that decision as perfect as possible, he should have a limited power to call in all such assistants as he might think expedient, the opinions so given to him to be given in public, he being solely responsible for the judgment he gave in the case?—Yes, that is my idea, except as to limiting the power of the Judge to call in scientific aid. I think his power herein should be unlimited.

668. (*Lord Overstone.*) According to the present practice, does the Judge know anything of the nature

of the case before it comes on for trial?—The pleas and notices of objections are arranged.

669. Is the Judge according to the existing practice sufficiently informed beforehand to be able to make a proper selection of assessors.—I should think it would be necessary for some officer to be appointed specially to give him information upon that point.

670. (*Sir H. Cairns.*) The Judge would know whether it was a chemical or a mechanical Patent or one relating to mining?—Yes; and frequently I think he would be better without some of his preliminary information, for at present he is called upon to go over an unnecessarily wide field of inquiry in a case.

671. (*Mr. Hindmarch.*) A copy of the Specification and the various pleas and objections would enable him to understand the subject matter to which he had to give his attention?—Yes, but the pleadings are often too artificial for scientific questions.

672. (*Mr. Attorney-General.*) How would he know the points in the various matters involved in the documents upon which controversy might arise so as to be able to apply his mind to them, how would they come out until the hearing?—It might be possible to call for assistance or to adjourn the case. I cannot tell how that would be, all cases are not so large as they are made to appear by the exaggerations of the contending parties.

673. That is to say the points that would be found upon an investigation of the documents might or might not when the case was opened be really disputed?—Quite so.

674. You know that in practice the area of a controversy is frequently much narrowed when people come to discuss the matter?—Yes.

675. (*Mr. Waddington.*) I suppose you would allow the Judge to have a jury if he thought proper?—Yes; the Law Amendment Society appeared to give good reasons against having a Judge, assessor, and jury, they spoke of the awkwardness of the position of the assessor between the Judge and the jury.

676. But might not the Judge have a jury instead of assessors?—Yes.

677. (*Sir W. Erle.*) Are you aware that in Chancery the Judge has full information before the case can be tried by a jury?—Yes.

678. (*Chairman.*) You are aware that it has been proposed, in order to prevent the use of an invention being exclusively confined to the Patentee, he should under certain circumstances, be compelled to grant licences to other persons to use his invention upon a certain payment being made to him?—Yes.

679. Have you considered that question, and whether it is expedient or possible?—I do not know about the possibility, but I think that it is expedient if it could be arranged. I heard an expression of opinion upon the subject in Manchester in 1861.

680. Is it your opinion that in practice inconvenience arises from Patentees refusing to allow other persons to use their inventions on the payment of a certain sum?—Occasionally.

681. You think therefore that there is an abuse to remedy if the remedy can be found?—Yes; I think so.

682. I suppose the question that would arise would be this, who is to fix the amount of the payment, and who is to estimate the value of the invention, the Patentee would ask one sum and the person desiring to use it would probably propose another, have you considered how that difficulty is to be met?—I think there is very great difficulty in it, and I am not prepared to suggest anything at present.

683. (*Lord Overstone.*) Do not you consider that a Patent is in its nature a monopoly?—Yes, in a limited sense.

684. In other cases where parties are invested with a monopoly is it not the fact that the public

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interests are generally considered to be best protected by leaving those parties to sell their monopolized article at what price they please?—In the case of a compulsory licence being matter of law, the need for it would very seldom arise, for I think the fact of its existence would prevent the necessity for the exercise of the law.

685. The point is this, whether there is as regards this question any real difference between a monopoly which is created by a Patent, and those other monopolies which are possessed in other things by different members of the community?—I think that a Patent is a peculiar kind of monopoly because it is not a monopoly in every sense of the word, for a Patentee is in competition with all others in the open markets in the world. His monopoly may be worthless for other reasons, besides the intrinsic quality of his invention.

686. Suppose there are two parties, one possessing a Patent for a monopoly, and the other possessing a monopoly in the possession of some article, the public interests are considered to be sufficiently protected as to any article in which there is a monopoly in possession, by the price, and is there any peculiarity in a Patent monopoly which renders that principle which is applicable to all other monopolies not applicable to a Patent monopoly?—Yes. I think that a Patent monopoly is of that nature that the Patentee is supposed to be willing to give the public the benefit of his grant, in the exercise of it.

687. Why should not the public rest upon the temptation of high price as a sure mode of obtaining the use of a monopolized article in the case of a Patent as they do in the case of all other monopolized articles?—There are cases in which the Patentee would resist any amount of price.

688. (*Mr. Hindmarch.*) I believe that Patents for improvements upon inventions already patented are very common things?—Yes.

689. You find that the first Patentee frequently refuses to let the second Patentee use his invention upon any terms whatever?—Perhaps not frequently, but occasionally.

690. In cases of that sort, do you think it would be practicable or useful to compel the prior Patentee to grant a licence to the subsequent one?—Yes; it would be useful if practicable.

691. Would that be a mode of getting a subsequent invention more early into use for the public?—Yes; and that is an argument in favour of it I think.

692. Do you see any practicable mode of effecting that object?—Nothing more than that there might be a compulsory reference to compel the Patentee to grant licences for the benefit of the public through the second Patentee.

693. (*Mr. Grove.*) It frequently happens that there are 20 or 30, or even say, four or five Patents taken out; how would you adjust the relative merits or arrive at any practicable mode of adjusting and settling what each party was entitled to for his Patent?—*Mr. Hindmarch* alluded I thought to two sorts of Patents, for instance, there might be one Patent that was for a broad principle, and then another Patent that was for an improvement upon some matter of detail within such broad principle.

694. In the present day there are not many for broad principles; the greater number are for improvements are they not?—They are for improvements, but still they often involve broad principles. It is to be remembered that, owing to the extension of commerce, an invention which is scientifically narrow may be commercially broad.

695. They are steps upon each other are they not?—Yes.

696. Take for example, the power loom, suppose there were four or five Patents, each being a step in improvement upon another, how would you adjust those or how could any arbitrator or tribunal adjust their relative merits?—I think simply by their ordinary intelligence and knowledge of the results

derived from the particular mechanism in each case.

697. Would not the commercial value be more likely to afford a means of adjusting it accurately than the judgment of any individual?—I suppose so, as between several Patentees who only differed from each other in that way; but that I think is hardly the kind of case that *Mr. Hindmarch* drew my attention to.

698. Take the case of a large number of manufacturing instruments for which Patents are constantly taken out, how would you by any means adjust the relative merits of the inventors, each of whom followed upon one another step by step?—I have nothing to suggest upon that.

699. In such a case each of the last inventions would necessarily be altered in its value by the succeeding Patent, and it would be of a fluctuating value; can you suggest how that fluctuation in the value of Patents could be adjusted?—No; it is only a check upon oppression that seems to be required.

700. (*Mr. Fairbairn.*) There is another case that may be put, such as a discovery in chemistry, or in mechanics, and suppose that a Patentee exacted from the public such a high price that it was necessary to compel him to grant licences or something of that sort in order that the public might have the benefit of it, have you any suggestion to make upon that point?—I see considerable difficulty in suggesting any mode of settling upon what terms a licence ought to be granted.

701–2. (*Chairman.*) The question has been raised as to whether it is expedient in the present day, with the greater intercourse that exists between various countries than formerly, that Patents should be granted to those who merely import inventions from abroad, have you considered that question at all?—I have nothing particular to say upon that. I do not know of any inconvenience beyond that which I have already alluded to, the complaint of the Americans.

703. The inconvenience to the public I presume to be this, that if Patents are not granted to the importers of foreign inventions, then any foreign invention may be used in this country by all persons without payment of any kind, do you consider that that obvious disadvantage is balanced by the stimulus that is given, by the existence of a Patent right, to persons to introduce inventions from abroad?—I expect so.

704. (*Sir H. Cairns.*) Does it, in your opinion, require the inducement of a Patent to bring inventions to England, are they not sure to come here without the temptation of getting Patents for them?—I hardly know whether my observations have been so precise upon that point as to enable me to give an opinion upon it. But I think that foreign inventions would not be found in a state so available for public use in this country if there were no English Specifications of them.

705. (*Chairman.*) Is there any other objection in connexion with this subject that you wish to bring before the Commission, or any other suggestion you wish to make?—One point that I have always urged has been the necessity of giving great attention to the Provisional Specifications. There are some persons that complain of the strictness that is now practised; some undue degree of strictness is alleged to be exercised, but my own opinion is that it is for the interest of Patentees and the public also that the work shall be done as well as it is possible to be done, and that the supervision exercised over Provisional Specifications ought to be complete. I have here something written upon that point, headed "Preliminary Investigations," which is a sort of balance to my remarks, for while I am on the one hand opposed to preliminary investigations, yet on the other hand I am in favour of them.

706. (*Mr. Hindmarch.*) Do you see any difficulty in the way of compelling every person who specifies

an invention to state distinctly in some claim or some claims what it is which he seeks to have protected by his Patent?—Certainly not.

707. Do you see any difficulty in practice in defining the nature of an invention which is sought to be patented?—No.

708. You have spoken of the practice of using language not distinct in framing Specifications, has that arisen in any case within your experience from the nature of the subject, or was it done purposely?—Sometimes it is done purposely, I believe. I have had contests with some inventors on that point.

709. We see now very many Specifications without any claim at all, and I believe you find some difficulty in ascertaining what the invention really is?—Yes.

710. Suppose the law made it incumbent upon every Patentee to state distinctly what he claims as his invention, do you know in practice of any difficulty in accomplishing that object?—No. I may add that one point occurs to me which I did mean certainly to mention, it relates to Provisional Specifications. Towards the close of the old practice the applicants for Patents were compelled to specify the particulars of their invention, but were permitted to strike out portions of the deposit of particulars on application to the Law Officer, and I applied, I think it was to Sir Fitzroy Kelly, for permission to strike out a portion of a Provisional Specification. At the time I entertained considerable doubt and eventually I found the statement was too wide for novelty, and it did not appear to me to be safe, considering, according to my reading of the law, the required identity of the invention all the way through. It did not appear to me to be expedient, that we should be at liberty to drop any portion of the original document that it was inconvenient to retain, but ought to apply for permission to narrow the original document. Then there would be a substantial identity in the two Specifications as to the extent of them, and as to the scientific proposition involved in them, whether the description of the one was in the form which I have sometimes illustrated as the soul of the invention, and the other as the body and soul together, there would still be the same invention. I failed in that effort, but I believe Sir Fitzroy Kelly said that he saw value in it, but could not make a rule upon the point. He went out of office and I was never able to revive it; but we have lost a matter of practice to that extent. The application for permission to strike out was recorded, and it appears to me to be important to revive the practice, and then there would be a better means of insisting that the two documents should be co-extensive.

711. (*Mr. Attorney-General.*) Did you apply to disclaim a portion of your Specification?—No, merely to strike out a statement in the Provisional Specification.

712. (*Mr. Grove.*) If you have in your description of the nature of your invention in your Provisional Specification stated too much, or that which you cannot sustain, you have power now, have you not, in your Final Specification of limiting it to the matters which are contained in the proposition which you can sustain?—We do that in practice, but that also gives rise to some ambiguity in the comparison of the documents. Besides it raises the question whether the Patent may not fail for want of proper consideration for the grant, which was based on the terms of the Provisional Specification.

713. (*Chairman.*) With reference to the preliminary investigation, I understand that you have before you a paper from which you wish to read some extract?—“My opinion may be briefly expressed thus: I believe that the powers given to the law officers of the Crown for investigating all applications for Patents are abundant in theory, but the practice is defective, and that all that is required is to bring the practice up to the theory.—in other words, I

think the preliminary investigation ought to be confined to the Provisional Specification as it is now, but I think the means at present provided for conducting the investigation quite inadequate to the purpose. I agree with an article published in the *Jurist* in advocating the transference of the duties now performed by the Law Officers of the Crown to a new tribunal; because, ‘they are over-worked, though highly competent men.’ Let us have ‘highly competent men’ not ‘over-worked,’ and then it would be seen how salutary a check could be put upon improper Provisional Specifications. When we consider that there are, on the average, about ten applications for Patents daily, each purporting to contain an adequate statement of the nature of an invention, and that the duty of the Law Officers is to ascertain in each case that the rule of the Patent Commissioners has been complied with,—“The Provisional Specification must state distinctly and intelligibly the whole nature of the invention, so that the Law Officer may be apprized of the improvement, and of the means by which it is to be carried into effect,”—I think we come to see that there is in the aggregate a considerable quantity of work to be got through by two ‘over-worked, though highly competent men.’ But it appears to me that in order to administer Patents properly, it is as important for the Law Officer to check irrelevant statements as to require sufficient statements in Provisional Specifications. In my judgment he ought to require every document to be amended that contained anything beyond the statement of the nature of the alleged invention. It is common for applicants for Patents to insert general expressions relating to matters which are intended to be included (if convenient) in the Final Specification, but which are probably not invented at the period when the Provisional Specification is deposited. The matters here referred to are not merely matters of detail belonging to the invention, the nature of which is stated (these might be inserted in the final document without being named in the Provisional) but matters involving some nature of invention beyond that so stated. In order to administer the check adequately, it might frequently become necessary to make the applicant, or his agent, attend upon the Law Officer to show cause why certain statements should not be struck out or amended. Then again there is a matter of administration to which Sir John Romilly, M.R., used to attach great importance when deposits of particulars of invention (under the old law) came under his notice, that of allowing portions of the statement to be struck out on application. We have unhappily, for the present, lost this practice. The consequence of this is, that it is usual now for Patentees to act as if they were at liberty to drop any matter stated in the Provisional Specification that it may be convenient to abandon, and to concern themselves only about ultimately specifying something within the provisional document. I believe Sir John Romilly’s principle to be the right one, and I trust it may be restored, of which there is some probability, if I have been correctly informed that the present Solicitor-General (no small authority) is favourable to the practice. Looking therefore to all the work for the Law Officers that is involved in a thorough administration of Provisional Specifications, it does not appear to me reasonable to expect that ‘over-worked men’ however competent otherwise can properly discharge the duties imposed upon them. I will only add that I think a competent lawyer, provided he be a good logician is fully equal to the task of preliminary investigation thus indicated, and the cases would be very rare in which it would be requisite for him to call in a scientific man to aid him, because he might properly reserve points of science until the complete description was put in.

714. (*Mr. Attorney-General.*) You stated just now that in your opinion the theory with reference to the

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duty of interference on the part of the Law Officer was perfect, but that the practice did not come up to the theory; are you aware that the duties of the Law Officer are prescribed in exact terms by the Act of Parliament?—Yes; as to seeing to the sufficiency of the Specification and the title.

715. I will read from the 8th section of the Patent Law Amendment Act this passage; “The Provisional Specification shall be referred to the Law Officer, who shall be at liberty to call to his Aid such scientific or other Person as he may think fit, and to cause to be paid to such Person by the Applicant such Remuneration as the Law Officer

shall appoint; and if such Law Officer be satisfied that the Provisional Specification describes the nature of the Invention, he shall allow the same.” That is what you mean by the theory?—Yes; I mean by theory principally this; the Law Officer having the power entirely within his control of availing himself of any assistance to any amount, or of dispensing with it as he may think fit.

716. Am I to understand that you think the Law Officer ought more frequently than he does in practice to avail himself of the assistance that he can call to his aid?—I was rather alluding to the difficulties that we are subjected to by a change of the Law Officer.

The witness withdrew.

Adjourned till to-morrow at half-past four o'clock.

NOTE.—The foregoing evidence relates principally to the mode of trying Patent causes, and the leading idea intended to be conveyed is that the best remedy for the acknowledged defects of the existing system lies in a full recognition of the principle of calling in proper scientific aid so as to enable the Court to construe the Specification definitively, and to exercise adequate control over the scientific evidence. Then it is a question only of degree of improvement what kind of Court should try the case, whether an ordinary Court (of common law or equity), or a special Court for trying scientific cases alone.

As, however, the important point to be established is the value of the proposed principle, it may be desirable to endeavour to make this quite clear.

The principle is that of providing a Court which shall be independent of the aid of scientific witnesses for the interpretation of the Specification, and which shall be strong enough in scientific capability to check exaggerations in scientific evidence. A further effect of such strength in the Court would be a salutary check on the exaggerations of legal advocates, especially when the temptation of working on a jury by eloquence and appeals to feelings was withdrawn.

A comparison may be drawn between the existing mode of trial and that proposed, so as to illustrate the change in an important particular.

At present evidence is given for a Plaintiff Patentee that the Specification affords sufficient information to enable a competent workman to produce the patented article; and evidence in denial of this is given for the alleged infringer of the Patent. Then a question is left to a jury, as a matter of fact, whether what is said by the witnesses for the plaintiff is to be believed, or that said by those for the defendant. But the jury are unable, as a body, to grasp the full import of the question for want of scientific knowledge.

Now, under the plan proposed, the scientific assessors would be competent to supply to the Judge an intelligent answer to this question, because of their antecedent scientific knowledge, and because of the practical control which their presence as recognized expositors of the science would exercise over the evidence. This would be very apparent in their treatment of geometrical drawings, which, if correct, are conclusive as to what they represent; whereas, at present, the drawings annexed to Specifications are but feebly dealt with by Courts of Law.

Such is the principle applicable either to the ordinary Courts of Law and Equity or to a special Court. But a greater degree of benefit might be expected to result from the establishment of a special Court. The argument reported as having been used by the Lord Chancellor with reference to the Bankruptcy Bill appears to me to be applicable to such a Court as this, wherein he speaks of “the benefit that would result from the establishment of an all-sufficient tribunal that would be able to administer justice in all its branches, and would set the example of a

“Court competent to discharge its duty without dancing the suitor to and fro to enable him to get a fragment of justice in one place and another fragment elsewhere.”

The same learned authority also said, “We in England suffer under evils which have grown up from the fact that a great portion of justice is administered by one tribunal, and another equal or larger portion of justice is administered by another, the tribunals being frequently antagonistic and opposed to each other, so that, in point of fact, justice is constantly elaborated by a system of counter processes.”

It would contribute much to the uniformity and efficiency of Patent administration if all applications for Patents were referred to a special Court; also all petitions for disclaimers and memorandums of alterations, in fact, if all the business except that of recording applications, registering deeds, &c. (which is done at the Great Seal Patent Office), were transferred to the same Court.

Then if all questions between parties as to infringement and validity of patents, and all applications for prolongations of Patents, were tried by the same Court much facility and saving of time and expense to the parties would result. The officers of such a Court would be in a favourable position for preparing cases for trial by eliminating irrelevant matter. And there might be a special reference library relating to Patents belonging to the Court.

Moreover, in addition to Patents, questions of copyright, trade-marks, and other technical matters might be referred to the same Court.

A few words may be added as to the judgment of the Court being final on the construction of Specifications, except as to the novelty of inventions. It is submitted that a Patent being a grant defined by the terms of the Specification, it is not reasonable that an authoritative construction of the document should be withheld, otherwise the grant becomes a mere chance in a prospective decision. This difficulty arises with great force when a share in a Patent right has to be conveyed from the Patentee to one of the public. The meaning of the document is, in the nature of things, essentially preliminary to all other points of inquiry in Patent cases, and therefore should be conclusively determined by authority at the outset of the proceedings.

The objection to a special Court that a Judge who only tries Patent cases might become narrow as a lawyer, may be met by suggesting that all the subordinate officers and machinery of the Court might be special, while the Judge came from one of the ordinary Courts of Law or Equity, or there might be a special Judge for the Court, who might on important occasions call other judges to his aid.

Again, as to the objection that it would be difficult to find scientific men who would be trustworthy as assessors, it is to be remembered that their function would be limited to advising the Judge as to the

meaning, proportions, and relations of the objects referred to in the Specification; in other words, to the translation of scientific language into common language. And it is submitted that the cause of the present failure in the use of scientific evidence would not be called into operation in the employment of scientific Assessors as proposed. For whereas, in the former case, the scientific witnesses have had to follow the leading of counsel either in the support of, or the opposition to, a pre-arranged hypothesis, ostensibly adapted to the capacities of a jury, in the latter case the proposed Assessors would be free to apply their minds to the technical language of Specifications, for the sole purpose of enabling a calm and learned judicial mind to appreciate the exact nature of the external objects referred to in the document.

Finally, allusion may be made to the important step

taken by the Lord Chancellor in the case of *Hills v. Evans*, of confining the argument to the points on the Specification, before proceeding to those relating to the question of infringement. His reason for doing so was thus expressed:—"I was desirous of having the primary matter first discussed and considered before I put the parties to the expense of preparing themselves for the second question." The "primary matter" was the validity of the Patent, and this turned on the construction of the Specification, as will be seen from the following words of his Lordship:—"Upon every ground, therefore, I arrive at the conclusion that the Plaintiff's Specification is good, and consequently the Plaintiff's Patent must be held to have been conclusively established at law."

It is submitted that this ought to be the constant practice.

W. Spence,
Esq.
27 Jan. 1863.

Tuesday, 3rd February 1863.

PRESENT :

The Right Hon. LORD STANLEY, M.P.
The Right Hon. LORD OVERSTONE.
The Right Hon. SIR WILLIAM ERLE.

VICE-CHANCELLOR SIR W. PAGE WOOD.
HORATIO WADDINGTON, ESQ.
W. R. GROVE, ESQ., Q.C.

THE RIGHT HON. LORD STANLEY IN THE CHAIR.

JOHN SCOTT RUSSELL, Esq., examined.

J. Scott Russell,
Esq.

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717. (*Chairman.*) You have had considerable experience, I believe, in connection with the Patent Laws?—Yes; I have taken out a good many Patents myself, and I have suffered a little from the Patents of others.

718. You have probably had to defend Patents of your own?—No; I have not defended any of my own. I have never made of mine more than a mere registry of priority of invention. I have not made mine a source of money, but I have suffered in this way from Patents. I have gone on in the course of my business, doing my ordinary work, and I have found other people taking out Patents for what I was doing without calling it an invention, and then prosecuting me under the Patent they had taken out for my own inventions, and it appears that there is nothing to prohibit them from doing that.

719. But if you were able to prove that you had been carrying on an invention, whatever it might be, at the time when the person claiming to hold a Patent for it took out his Patent, would not that relieve you from all difficulty in the matter?—It would only give me the pleasure of defending a lawsuit.

720. (*Mr. Grove.*) Do you mean that you are legally interfered with, or only in such a way as to drive you to defend yourself by a legal process?—It drives me to the cost and trouble of defending myself, whatever they may be.

721. (*Chairman.*) Did you say that you had not thought it worth while to defend any Patents that had been taken out by you, and that you merely registered your invention in order to protect yourself against the patents of others?—That is the real use that I have made of Patents.

722. I may infer, so far as your own practice is concerned, whatever your theoretical view may be, that you are opposed to the system of Patents, and consider that you would be better off if no such things existed?—I should be very glad to see the Patent Laws entirely removed, but I fear that that would be attended with injustice to many other people. I am afraid that we cannot altogether do away with all right of a man to his inventions, and therefore I should be most happy to put all my inventions into the same kettle with the rest of the world, and leave the matter free. I am afraid that you could not altogether do away with the right of a man to the

benefit of the fruit of his own brains; that, I think, is the difficulty, and I have no panacea for it.

723. Does it not come to this, that whereas an inventor, who is in a position to work out his own inventions upon a large scale, stands in no need of a Patent Law for his protection, an inventor who has not the means of carrying out his inventions, except through the agency of others, may be liable, in the absence of a Patent Law, to lose the fruit of what he has discovered?—Yes; and that is why I fear you cannot do away with it without doing injustice to those men. But I will, with your permission, make a suggestion of a practical nature upon that subject. At present, shall I say, the Officers of the Crown make a bargain for the public with a patentee; they say, if you will give us your invention, we, on the part of the public, will give you a practical monopoly for a certain time. I think that it would be good to add to this first of all a power of discrimination, and, secondly, a power of making a price; that is, making a bargain in which price should be an element.

724. (*Sir William Erle.*) You mean a compulsory price?—Yes. For example, suppose a preliminary court of some kind has been constituted a man brings forward an invention for an improvement of iron, and the preliminary court sees no reason why it might not turn out a very valuable invention. Now I complain that you give to this man an unlimited monopoly, and leave him to make any use he pleases of it. I ask you to make a wise bargain for the public and to say, very well, we think it good; we will not give you an unlimited power, but if you will say that everybody shall use this at 1s. a ton, we think that the public might be benefited by it, and we therefore will grant you your Patent in consideration of a fixed licence to use it at 1s. a ton. I say that if you make a bargain, as you do now for the public, I should like you to make that bargain better and more thorough.

725. If I gather your meaning rightly, the two amendments of which you have expressed yourself in favour are these—first of all, a preliminary investigation before a Patent is granted, and next, what is generally called a system of compulsory licences, by which a Patentee should be precluded from keeping his Patent for his own and sole use?—With this addition, that of fixing then and there the preliminary price.

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726. (*Mr. Waddington.*) That is, before the Patent is granted?—Yes.

727. (*Chairman.*) In other words, instead of giving the Patentee a monopoly, as at present, you would only grant him a tax upon the use of the invention at a fixed rate?—Yes.

728. (*Mr. Grove.*) I presume you would fix a maximum price?—Yes.

729. (*Lord Overstone.*) Does not your view involve the appointment either of an officer or of some commission who should estimate the value of a Patent discovery?—Unquestionably.

730. Do you think it is possible to trust to any officer, or to any commission, so delicate and so doubtful a duty as that of estimating beforehand the real value of a Patent discovery?—I do not wish at all to conceal the great difficulty of that case, but I think it most desirable. I do not see why a public Court should not be constituted in which that case might be thoroughly tried, and in which it might be tried with this pecuniary bargain or limited licence as one of the issues to be tried.

731. Do you not think that there would be universal dissatisfaction on the part of discoverers with any estimate that a tribunal so constituted might form of the value of their discoveries?—If they were so discontented I should refuse to give them a blind monopoly; and let this be remembered, that they come asking you to give them an unlimited power over me; for if I, by any chance, happen to stumble upon their invention, and come to you, I think you would have a right to say, I must see what use you are going to make of your power before I give it you.

732. If we look back to the past history of discoveries, do you think that many instances will be found in which discoveries which, at the time, were regarded as of little value, have ultimately proved to be of great value?—Yes.

733. Does not that necessarily involve the admission that such a system would not work justly?—I do not say that such a system would in all cases work justice; that is a special difficulty; but I do say that nothing could work greater injustice *qua* the inventors themselves than the present Patent Law does. Many most meritorious inventors under the present Patent Law are utterly ruined, enrich others, and never pocket a farthing themselves; therefore the present law is as unjust as a law can be in its practical working.

734. (*Chairman.*) Will you be good enough to explain to us in what manner it is that, as you say, many inventors are ruined through the operation of the present law, because that is one of the points to which we are anxious to direct our inquiry?—I think that the unlimited power given by a monopoly to an inventor has this practical effect at present, that when an invention has been made the subject of a Patent, everybody shrinks from it, everybody runs away from it, everybody avoids it as an unlimited evil, because the person who has the monopoly can subject you to a most expensive prosecution, and can charge you a most inconvenient sum for what you have done, and can punish you in every way for having touched his invention; whereas if you would take away that power of unlimited monopoly, and tie him at once to a small limited sum which he would have power to levy, the inventor would have this great advantage, that nobody would be afraid of touching his Patent any longer, and instead of avoiding the Patent because it was a Patent, knowing that we should only have to pay 1s. a ton for a very great benefit, we should at once examine the Patent, take to it kindly, and prosecute it as far as we could, knowing what the limit was of the difficulty and risk that we were encountering; and so, I believe, you would make the public take kindly to Patents, instead of regarding them as a great evil.

735. Do you mean that at present the dread of approaching a Patentee is so great that persons prefer to forego the use of an invention which may

be very convenient to them in their business, rather than make a mere application to a Patentee to know what he would charge for allowing his invention to be used?—That is continually the case, and for this reason, that the very application that you make to the Patentee immediately raises his ideas, and immediately makes him conceive that he is going to get a great haul, and that immediately puts you into a difficulty, and to a correspondence which will probably cause you great inconvenience hereafter.

736. As I understand the matter, under the present law, a Patentee is not bound, because he has allowed his Patent to be used at a certain rate by one man, to allow the use of it to another?—No.

737. Probably, therefore, in the first instance he would be willing to grant the use of his invention at a very low rate; but a practical illustration of its value might be given to those engaged in business, and if that were established he would then proceed probably to raise his charge?—Precisely so.

738. Is it not therefore the interest of the Patentee to get one, or two, or three persons, at least, to use his invention at the lowest rate, in order that so it might become known to the public?—It certainly is the object of many Patentees to get their Patent tried, and it is the object of many other Patentees not to allow their Patents to be tried, but to constitute them practical monopolies. If, therefore, a man encouraged a new invention it is very probable that the first use that would be made of it would be to turn it against himself. The circumstance of my having cultivated a man's Patent would put it into his power, when I had devoted a great deal of attention to it, at once to come down upon me with a very heavy charge, unless I had made, from the beginning, some special bargain with him.

739. The point I wish to put to you is this. Assuming you to be the first applicant for the use of a Patent, you would make a special bargain with the Patentee, and it would be the interest of the Patentee to agree to that bargain upon favourable terms to you, in order that his invention might become generally known, and no doubt that those who applied later would have to pay a higher rent. But in what sense can it be said that you, as the first applicant, would have your priority of application turned against yourself?—It could not be so said if I had made a bargain for the whole term of years. I grant that the first applicant has it in his power to make a wise bargain.

740. (*Mr. Grove.*) You stated, I think, that there were two classes of Patentees, one of which would be anxious to grant the use of their Patents upon easy terms, whereas, another class would wish them to be monopolies. Were you then alluding to this kind of case, that a Patentee might take out a patent for a thing in which he traded himself, and in which he was anxious to monopolize the entire trade, and would be unwilling to grant licences, while on the other hand another Patent might be taken out merely for some improvement in a thing of every day use, in which case the Patentee might be willing to grant licences?—Yes, those are the two cases that I wish to point out.

741. (*Mr. Waddington.*) Would you apply your scheme of compulsory price to both of those cases?—Yes.

742. As a condition precedent to both?—Yes.

743. (*Mr. Grove.*) Referring to the question of preliminary examination of which you have spoken, if I understand you rightly, you do not conceive that that would be a perfect institution, but it would be the least of two evils; that is to say, the present working of the Patent Law is very defective and injurious even to inventors themselves, and you are of opinion that a preliminary examination, although it might fail, and occasionally shut out a good invention, would be a lesser evil to the public and to inventors than the present system of granting Patents unlimited?—I entertain that opinion very

strongly. I think that a Court composed of a good lawyer, one or two good mechanics, and one or two good chemists, could filter the mass of Patents to a very great extent, and could, at first sight, render to an enormous number of inventors a great benefit, and prevent them from wasting further time, pains, and money upon that which the Court might at once know *prima facie* to be neither a new nor useful invention.

744. Then I suppose you would assume that the Court would only reject Patents where it entertained a strong opinion, or had a clear knowledge, that the thing was neither new nor useful?—Certainly.

745. But that in a case where the value of the Patent was a matter of doubt they would grant a Patent?—Yes.

746. You have used frequently, in speaking of Patentees, the term, "right to a Patent;" I apprehend that there is no right to a Patent—that it is a monopoly granted *ex mero motu* by the Crown, upon the assumption that the public will be benefited by it?—Yes; and therefore I propose to make it more of a bargain than it is, and that you should say, now, we are willing that this should be a monopoly, provided you make it very beneficial to the public at the price at which you offer it; we will give you a Patent for a new process of making iron if you offer it to the public at 1s. a ton, but if you ask from the public 1l. a ton for it, we will not give it you.

747. In other words they should say, you having no right to a monopoly, we will grant it to you upon you showing us a *prima facie* case, and consenting to terms that we think will be beneficial to the public?—Yes; and I complain of the authorities who grant a Patent making a bad and blind bargain for me. I think that they make a one-sided bargain for me, and I want them to make a better bargain for me.

748. (*Lord Overstone.*) You mean for the public?—Yes; and I think that in asking you to do that, you will also render the Patentee a great service.

749. (*Mr. Grove.*) Then comes the question as to the difficulty of assessing the value of a Patent. Can you give the Commission any practical assistance as to how the value of a Patent, at a particular time, is to be assessed with reference to a licence, it being, in point of fact, a sort of fluctuating thing, the value of a patented invention having reference to the then state of trade, but liable to be altered by a change of trade the next day. How would you, considering the great number of Patents that have been taken out, enable any tribunal to assess the license dues properly?—I think that the difficulty of that would be much less than you anticipate. I think that a Patentee looks generally to a much larger use of his Patent than afterwards takes place, and therefore if you fix it, say at 1s. a ton for a new mode of manufacturing iron, a man knowing the number of millions of tons that are manufactured in this country, and sanguinely believing in the value of his invention, would, at that moment, be willing to make a very low and good bargain with you; whereas, if he has found some person unknowingly using his Patent, and being caught in a trap, he becomes immediately unreasonable and exorbitant. You have given him a power over me (the public) which I do not like, and which I think is bad for him.

750. Your ideas upon this subject are different from those that we have heard generally advocated; you would say that if a Patentee is a dog in the manger, and will not grant a licence, although persons should come and ask for one, previously to making the bargain you should fix terms?—Precisely. I think that if you grant a Patent, you, representing me (the public), I should insist, before you part with my liberty, upon your making a good bargain for me.

751. (*Lord Overstone.*) With regard to the interests of the public, is it not the fact that Patent monopolies are granted for two purposes, one to stimulate the activity of inventors, and the other to secure to the public the publication of their discoveries?—Yes; for both purposes.

752. Do you think that your plan would be as efficient to accomplish those two results as the present state of the law?—I think more so.

753. Are you of opinion that Patentees would not under your system be less disposed to publish their inventions, when they were compelled to sell at a fixed price, rather than under the present system, which gives them a discretionary power to exact what price they think proper?—I think just the contrary, and for this reason: it must be observed that I am applying my bargain to a tribunal which has the power of rejecting Patents, and when that tribunal shall have passed a Patent, and shall have approved of a fixed maximum charge, say of 1s., that tribunal will have done two things, it will have given the inventor the benefit of an exclusive Patent or boon, instead of the free sort of routine Patent which he takes out now; therefore I think that the Patentee would be greatly benefited by a discriminative Patent, and the public also by having a good bargain made for them at the beginning.

754. Have you any reason to suppose that Patentees generally would take that view of the matter, and would acquiesce in the plan you have suggested?—I should certainly think that inventors would. I know very few men whose inventions are worth anything, who do not desire to have discriminative Patents granted instead of indiscriminate Patents.

755. Will you be good enough to explain what you mean by discriminative Patents?—At present there is an indiscriminate granting of Patents.

756. (*Mr. Grove.*) You would not say that all inventors would desire to have this discriminative system adopted, but that the inventors whom you could point out would desire to have a discriminative system?—I mean inventors of valuable inventions, as distinguished from men who only think that they have invented, because they do not know and understand the subject, and that is the great majority.

757. (*Chairman.*) To what extent do you propose that this process of discrimination should be exercised. You would, I presume, reject any Patent that was not new?—Yes, I would reject any Patent that was manifestly not new.

758. Would you reject any Patent because it was considered to be of only small value?—No; but that which was manifestly not new and manifestly not useful; those are the two cases in which I should reject Patents.

759. With reference to that latter point, if a Patent is to be rejected for being manifestly not useful, would not your proposed tribunal be taking upon itself the responsibility of saying that at no time within the next 14 years, which is the term at present fixed, can this discovery possibly become useful, whatever changes may take place in the trade or manufacture with which it was connected?—I do not think that anybody can be responsible for doing more than pronouncing a judgment according to the knowledge which they have at the moment; of course it would be impossible for any Board to be so endowed with foresight as to say that no good could come of any invention within the next 14 years; but many inventions are so manifestly absurd that the greatest benefit to the public and to the inventors, in my opinion, is to let them know at once that it is so; for example, as Members of this Commission are aware, how many inventions there are for putting weights at a greater distance from the centre, so as to produce something equivalent to creating a power; it is well known that there are hundreds of these inventions every day, and it would be the greatest blessing in the world to an inventor of that class to stop him in his career.

760. Take such a case as you have mentioned, that of taking out a Patent for a thing which is mechanically impossible, does it ever happen that a man comes into a Court of Justice to defend a Patent of that kind; because if it does not so happen there is this superiority in the present system, that the Patentee is satisfied, because he has had an oppor-

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tunity of trying his experiment, and the public is not injured, because that experiment has hurt no one?—But he would equally have power of trying the experiment, in most cases at all events, without taking out a Patent, which is the purchase of a prospective benefit; it is the purchase of a prospective benefit to the public, and it seems to me that it is quite fair to make such a bargain.

761. At the present time, if a Patent passes the Law Officers which it is impossible to work, the public is not injured, and the Patentee, when it fails, is satisfied that there is no one to blame but himself; would it not follow from the system which you propose, that the public would receive no additional benefit in such a case, and that the person making the invention would probably for the rest of his life say that he had been ruined by the refusal of the tribunal you suggest to entertain his patent?—There would be many cases, I have no doubt, of great discontent in such a case.

762. You admit that by taking out such a Patent as you have alluded to, no man would be injured except the man who had taken it out?—I do not see that anybody would be injured.

763. (*Vice-Chancellor Wood.*) Would not your plan altogether exclude that class of Patentees to which Mr. Grove just now referred, those who take out a Patent for the express purpose of working it with their own capital, and for the benefit of their own peculiar trade, and excluding others from having the advantages which they enjoy in their particular trade?—Yes, there are such Patentees.

764. Would not your scheme exclude them?—Yes; I fancy that that is really and truly the meaning of such an arrangement. Any man may conceal a thing, and enjoy the whole benefit of it if he likes; but the public do not want him to conceal it, nor to have the exclusive benefit of it; the public say, if you will share this benefit with us, we will give you something in return.

765. As the law at present stands the benefit is shared with the public, by granting to the inventor a lease, as it were, for 14 years of his invention, and then the public come in for the reversion?—Yes.

766. Would you think it advisable that those who are stimulated to invention for the express purpose of improving their trade and business should no longer have that stimulus, but be compelled to give the benefit of their inventions to the public?—I think that they ought to have a moderate and fair stimulus. I do not think it is for the good of the public that when a valuable invention is discovered, some one man only should be permitted to manufacture it. I am quite sure that if half a dozen houses were permitted to manufacture an article, even although paying a large patent right to one, that the improvement of that article would advance much more rapidly.

767. (*Mr. Grove.*) You are no doubt aware that there are cases of Patents which are practically useless, but which, upon the face of them, do not appear to be so, and are not thought so by the Patentees themselves. Would any public impediments, in your judgment, be produced in the case of Patents which would, by discriminating persons, be found to contain but little in them, in consequence of the holders of those Patents menacing others in trade, giving them the option probably of abandoning a more valuable thing, or of contesting an action; the Patentee having a strong interest in expending much money in such a case, but the public not having a similar interest?—That is the most noxious kind of Patent.

768. Do such cases as those produce public impediments, by preventing other inventions of the same sort, but more useful inventions, from being practised?—Yes; and I think I know of such a case as your questions refer to. There are a great many Patents of that kind taken out for boilers of steam engines, and boilers of steam engines admit of a very enormous variety of shape and proportion without damaging their efficiency. The consequence is, that

it is hardly possible at this moment for a man having to scheme a boiler for a new situation or new circumstances, to avoid putting his foot in doing so into a trap which somebody has previously set for boilers. It does not follow because it is a Patent that there is any merit in it; it does not follow because it is a Patent, that it should not suit some particular circumstance which may arise, and yet as an invention it has no merit at all. I would say, therefore, that nearly the whole of the Patents for the boilers of steam engines at this moment are of no practical value to inventors or to the public, but they are continually getting every man who makes a boiler into a scrape with some Patentee, because almost every conceivable form of boiler having been previously patented, and bit of a boiler, one cannot make any sort of boiler without infringing some man's Patent. That is the case of the most numerous and most valueless Patents, which are yet full of injury to the public, and do no good to the authors.

769. (*Vice-Chancellor Wood.*) There was a case something of that kind with regard to the screw, in which several Patentees clubbed together, and made a joint stock company?—Yes; and I think I may illustrate the subject very well in this way, that after you have got one good screw with the largest possible merit of contrivance, you could invent 150 other screws, every one of which should differ from the original, and no one of which should possess any real merit; and yet it would have this effect, that you could not set about making a screw for any particular case without infringing some one of those 100 Patents, and that is an unmitigated evil. I can see no good whatever in having granted Patents for little variations on existing screws which possessed no merit as inventions, and which were no good to anybody.

770. (*Lord Overstone.*) Take that very case. Do you feel confident that it would be possible to construct a tribunal which should distinguish between useful inventions in regard to the screw, and those which you have described to be useless inventions, and to discriminate in a manner that should give satisfaction to the public on the one hand, and to the inventors on the other?—Up to a certain point, but not so far as you put it. I will endeavour to state how far it could decide negatively upon a great number of them. I think that the Court would find it perfectly easy to give satisfactory decisions; but I think it would be necessary, whenever the Court came to ambiguous cases, to allow those to pass; that is to say, to give the benefit of any doubt in their minds always to the Patentee. I think that that is the only way in which they should proceed, for you cannot expect a Court to predict infallibly, in regard to inventions, their precise degree of success and merit. If such a Court could do this, it could absolutely wipe away all those which had no merit of invention.

771. (*Vice-Chancellor Wood.*) Suppose your scheme were adopted, would it not have this great advantage, that by a system of compulsory licences you would encourage the invention of real improvements, because a person, as you are aware, by the present law cannot for fourteen years use an improvement unless he has a licence to work the original Patent; and would not your scheme, therefore, if adopted, very much facilitate improvements by giving parties an opportunity to bring their improvements into immediate action?—I think it would very much facilitate them, and in this way: you might see a very valuable Patent, and you would say, now I cannot take that because some person says, I have patented this, which is a little bit of that; but if I knew that I could get that for 1s. or 1*l.* a ton, I should immediately add this to that; and so you might have a machine which was overlaid by 30 or 40 patents; and provided those 30 or 40 patents were, as I have supposed, at 1s. a horse power, or 1*l.* a ton, or some such easy price, every man's invention could in this way be instantly brought in to help every

other man's invention. If I were to undertake a negotiation of that kind, involving half a dozen Patents, I do not believe that I should ever make an arrangement with them all to enable me to introduce the invention.

772. (*Mr. Grove.*) With regard to such an examination as you have supposed, there may be two classes of cases to come before the tribunal—one the Patents of which their utility or practicability might be doubtful in the then state of human knowledge. Take, for instance, Davies' mode of protecting the bottoms of vessels: one set of people would say it was not practicable; another set of people would say it was practicable; and there, I suppose, you would assume that a Patent would be granted. But there might be another class of inventions, and a very large number, which, assuming their practicability to the extent which was claimed for them, would nevertheless be of a minute or frivolous character, and no subsequent knowledge could alter that—for instance, the shape of a boiler, and the particular form to be given to a thing; one might have a little more convenience than another; and at the present time the law is, if there be any modification, so to speak, or any utility, it is patentable by law. Would you exclude such inventions as those of which the utility was obviously upon the face of them extremely slight?—Yes, and I can give you two cases I think exactly in point. Almost all engineers agree that little modifications in the shapes of boilers are of no merit and of no value; but some man not long ago invented an entirely new principle in boiler-making, for which, I confess, I anticipate future success. An Italian of the name of Grimaldi undertook to make a boiler move so that every part of the water should come in and turn over every part of the boiler, and he obtained thereby an enormous increase of evaporative power. Now, a perfectly new principle like that of making a boiler move so as to turn the water in it is so palpably different from a mere modification of shape, that I fancy the Court I have supposed would *primâ facie* reject the shape; but although it could not predict that this motion would have all the wonderful effects that perhaps it may produce, it would see that it was so thoroughly different in principle from what had been done before, that it would not feel itself justified in saying, "This man shall not have a Patent for it."

773. It might fail partially or?—Yes, but the Court would not reject it.

774. (*Chairman.*) Do you consider that in such a Court as you propose there ought to be any one to represent the interests of the public as against an intending Patentee, because otherwise a Patentee would come with a strong *ex parte* case, and there would be no one to state what could be said upon the other side?—I think that a Court consisting of a lawyer, two mechanics, and two chemists would, from their very nature, sufficiently represent the public interest. There is an aversion, I think, in the minds of skilled men to admit that to be an invention which is of no value, and I think you might consider those four or five officers of the public sufficiently the friends of the public, and I think you might, therefore, entrust them with the making of the bargain.

775. Admitting that, who is to go through the great labour of getting up the case out of Court, because obviously there is a wide difference between a judge having to ascertain by his own investigation that such and such a Patent is not new, and his having simply to decide that it is not new, when all the facts against its novelty are brought before him by counsel or otherwise?—I quite understand that difficulty; but I have no doubt that the value of a discriminative Patent would be reckoned so great that the fees of such a Court would be paid with the greatest pleasure in order to obtain a discriminative Patent. Therefore the Court would be able to appoint two competent persons to report to it whether an invention was *primâ facie* useless, or not new, or only a trivial matter. It is quite

plain that those people would be then able to come before the Court with the inventor, and give this decision after hearing. I should not take upon myself to lay before this Commission anything like my own crude views of what such a Court ought to be. I think, however, that I can see perfectly well how a Court would say on this subject. Mr. A. or Mr. B. are excellent judges, call for a report from them, and let them have a fee of ten guineas each for that report. The Court would how to send Patent accounts to the right person to be reported upon, and I think that such a system of discriminative Patents would be well worth the fees of such a Court. There is a difficulty I confess in getting a Court to decide where you have not two opposed parties to fight; and it is one of the advantages of the existing system that you never have a fight until one person goes and covers another's Patent and drags him into Court, and then you have a case ready for the decision of the Court. The difficulty that I see if the other case is that you have not two persons before the Court to do the fighting.

776. (*Mr. Waddington.*) This discriminative Patent is to be unattackable afterwards, I suppose, and not to be allowed to be called in question upon points of utility and novelty in any future proceeding?—I do not quite go so far as that. I have said before that wherever there was a doubt it should be given in favour of the Patentee, and he was to have his Patent; there would be a prestige in favour of it.

777. You would give him no other protection?—I think not.

778. He would be not so likely to be dragged into Court, but he might be?—Yes.

779. (*Vice-Chancellor Wood.*) You are of opinion that that, coupled with a moderate licence, might diminish the tendency to litigation?—Yes. I think it would bring the public and the inventors together, for it must not be forgotten that at the present moment the public and inventors view each other with a kind of hatred, and I want to bring them together. I think that nothing but making them reasonable will bring them together.

780. (*Mr. Waddington.*) There is, as we have been informed, a preliminary investigation in America?—So I have understood, but I can give the Commission no information upon that subject.

781. Nor as to what you propose, namely, the fixing of a price at which a Patent is to be used?—I do not think that that exists in any country, but I think it would be of the greatest value in this country.

782. (*Chairman.*) As I understand you, with regard to the question of a licence, the Court is to decide without appeal, not only as to whether there shall be a Patent or not, but as to what precise value shall be fixed upon the Patent?—Certainly as to a charge, or as to the condition on which a monopoly shall be granted.

783. Therefore it would not only be taking upon itself to declare that an invention is sufficiently valuable to deserve a Patent, but it would also declare the precise degree of value to be attached to the invention?—A price is to be fixed that will allow an inventor to live on the user.

784. (*Sir W. Erle.*) Have you known many Patents granted at various small stages of an invention, all tending towards one great result?—A great many of those exist.

785. Would it not be very difficult to foresee, each stage of an invention being a slight advance upon the former one, which would secure a valuable and profitable result?—The foreseeing is extremely difficult.

786. Would there not be this danger, that the tribunal, after passing three of these stages, would reject the one that was gradually reaching a distant point, stage by stage, but producing nothing, while at another stage it might produce very large advantages and great wealth?—That is so. I think, therefore, that the charging a very small lordship upon each would probably lead to those very men combining, so

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that instead of one of them carrying off the whole price, they would all club together and get the 5s.

787. Has it at all occurred to you to consider Patents for products for which the inventor has seen a small but limited use, and that the product has been applied to an unforeseen use, and has produced immense profit which was never anticipated?—Yes.

788. (*Vice-Chancellor Wood.*) You are aware, probably, with regard to the screw, that six or seven Patentees did combine, and divided the profits arising from all the Patents in proportion to what was considered to be their respective merits?—Yes; and I am obliged to you for suggesting that example to me, because they did in the end agree upon the great screw question just to do what I am now recommending, they appointed arbitrators, and among the half-dozen rivals they had great difficulty, but with difficulty they screwed them all down to a moderate special royalty, and the moment they had done that this unremunerative Patent became a prosperous one, and they all divided a little money. I believe that you would, by moderating the charge made by the Patentee, effect a union between the public and him, which is wanted.

789. Are you aware that at the present time the Royal Society, when papers are presented to them for the purpose of discussion, and of being placed on their Transactions, refer the matter to members of their body to report upon?—Yes, and that is always done by the Council in the Institution of Civil Engineers; we always do the same thing with all valuable papers that are communicated to us.

790. (*Mr. Grove.*) Upon the whole has that practice worked satisfactorily; has the number of objections been few and far between, or has the grievance of rejection been a comparatively limited one?—I never heard of it being a grievance.

791. These, I suppose, would be more difficult matters than anything in the way of Patent protection, or ascertaining whether a paper contains a new discovery or not?—Of course our cases are cases of extreme difficulty, as they would be, I presume, in the Royal Society, because in both cases they are probably discoveries.

792. (*Chairman.*) When Patents had been granted after such an inquiry as you propose, have you any suggestion to make as to the manner in which their validity should be tried, and disputes arising thereupon?—That goes to the question whether a Patent Court for the trial of causes, like the Divorce Court for the trial of divorces, should be established. I think that I may say, for the whole profession and the mechanical world that I know anything about, that we are extremely desirous to have a special Court established.

793. Are you of opinion, especially supposing that the reforms you propose were adopted, that there would be business enough to keep such a Court open during a considerable part of the year?—Certainly. An enormous number of Patent cases are at the present moment driven to arbitration, which is in my opinion an excessively bad way of settling cases very often, simply because we have not a good Court; and I believe that a Court with a Judge and four professional assessors would be infinitely preferred upon Patent cases to a jury trial. I think that in almost all cases you would find that both parties would leave the decision entirely to the Court.

794. Do you think that in such a Court a jury would be desirable or not?—I think not, although a power might be given to call in a jury; but I think that in almost all cases both parties would prefer a good honest Judge with four assessors. I would give him the assistance of four assessors in the manner in which you are no doubt aware that professional assessors are allowed in the Admiralty Court. In that Court the Elder Brethren of the Trinity House are called in when the question to be tried is about putting the helm a-port or starboard.

795. (*Vice-Chancellor Wood.*) Do you think that the assessors should be merely informants to the

Court, or that they should have a voice with the Judge?—I would rather not give an opinion upon that point. I think that an experienced Judge would give a much more practical opinion upon that question.

796. (*Mr. Grove.*) You have stated that both parties would prefer a Court, constituted as you have described, to a jury. At the present time the plaintiff in a Court of Law has, so to speak, a double advantage, for if he has a good case it may be presumed that the Judge will be in his favour. If he has a weak case he has a certain sympathy, and, from having the last word, he may get a benefit from the jury. Do you think that a plaintiff would generally prefer a tribunal with a Judge only?—I would rather not answer that question. I think that question might be better put to another person; but I will go so far as to say that I would not give the parties the option.

797. (*Vice-Chancellor Wood.*) I suppose you would leave to the Judge the option, if he thought there was a matter of fact to be tried, and not to the parties?—Yes.

798. (*Sir W. Erle.*) In your experience have you not seen a great number of dishonest litigants, plaintiffs who bring actions in the way of persecution, and defendants who desire to destroy a Patent, and where one or other of the parties for the most part acts in bad faith, trying to injure his adversary in any way that he can?—I should say that the greater number of Patent cases are cases of oppression.

799. Have you known cases of oppression where the Patentee has been the oppressor?—Yes, frequently.

800. Have you known cases of Patentees with a good Patent, and in which there has been what may be called a dishonest attempt to destroy it?—Yes; I have known both on a very large scale; for example, there was the great hot blast case. I was engaged in that from the beginning in the capacity of arbitrator; and in that great hot blast case the whole litigation arose from the ironmasters, who were making enormous sums of money, wishing to get rid of a very small Patent rate per ton, which had accumulated to an enormous sum in consequence of the success of the Patent. The expenses in the hot blast Patent case amounted, I should think, to more than 100,000*l.*

801. (*Vice-Chancellor Wood.*) Would not that illustration rather lead you to think that even your plan of a royalty would not be a specific against unjust attempts to deprive a Patentee of his advantage?—It must be admitted that as against dishonest men it is extremely difficult to afford a legal protection.

802. (*Lord Overstone.*) You think that this special Court for the trial of litigated Patents, might be differently constituted from the Court you spoke of for the purpose of granting Patents?—I am not sure that it should be, but I think that the abilities that would qualify for the one would also qualify for the other in the same degree.

803. Your opinion rather is that one Court would discharge both of those functions?—My first impression would be that; but I think that a gentleman who is present might say that he would fear the having originally granted the Patent might give some bias in judgment to the Court that had granted it, if it were called upon afterwards to adjudicate upon its own grant.

804. (*Mr. Grove.*) There might be another question, might there not, that the Court might be supposed to be interested in saving themselves work, and therefore might reject more Patents than they ought to do; do you think there would be any validity in that objection?—There might be.

805. Have you known, in your own experience, cases as against a meritorious Patentee, where it was the interest, so to speak, of the trade to combine against him; for example, the trade might be interested in a monopoly of the existing state of

things, their plant and arrangements might all be adapted to that existing state of things, and it would be a very serious inconvenience to them to displace all their plant and disturb their arrangements, and new people would be in a better position than they were, for new people would only have to build, while they would have to unbuild and build up again?—Yes, and there is another great case to which I may refer, which would show the justice of an early previous inquiry; there was the famous case in the wool trade. A large number of men engaged in that trade combined to litigate that Patent, and at the same time that they combined to litigate it they combined to evade it, and to use machinery derived from it. They intended to evade the Patent, and by a combination there was an evasion practically of the Patent, an enormously expensive and massive litigation followed, and they drove the owner of a most valuable Patent into much easier terms than he deserved, and after they had got it into their own hands they made enormous sums of money of it.

806. (*Sir W. Erle.*) They made enormous profits after they had got it into their own hands?—Yes.

807. The merit of that Patent was, I believe, unknown until Lister's invention brought it into great practice?—Quite so.

808. (*Mr. Grove.*) It may be the case that certain trades in their existing premises are nuisances, that is to say, they are an injury to a neighbourhood, such as many chemical factories, and parties acquire, so to speak, a vested interest in devastating the neighbourhood. Would it not be to the interest of those parties actually to impede an invention that would have the effect of removing the nuisance, as it would bring into the trade a very large competition which they had not to contend with before?—I know of such cases, but I do not remember their having been litigated; but there are cases at Swansea and near Glasgow, where a chimney 450 feet high was erected in order to prevent the devastation of the neighbourhood. Those are cases in which a Patent would be opposed that would benefit the public; and there are many cases of vested interests in which Patents are so opposed.

809. (*Chairman.*) Have you ever considered the question whether Patents should be granted to persons who import inventions from abroad?—I cannot see any equivalent in an importation by a person from abroad for which we should give him a monopoly, excepting the inventor himself applied for a Patent in this country, in which case I do not see how it could be refused.

810. You do not consider that the mere fact of happening to be the first person who brings in a foreign invention from France, Russia, or the United States, ought to entitle him to a monopoly, even for a limited term of years, as against all the rest of the world?—I should think it would be a great misfortune to grant it.

811. (*Vice-Chancellor Wood.*) Supposing, now that there is such a facility of communication with the Continent, we carry the question a little farther off, and suppose that a man discovers in Thibet, or in the interior of China, some very valuable process of dyeing, that it is in his breast alone, is that a case in which you think he ought to have a Patent granted to him?—I am afraid that it is one of the exceptions for which you cannot make a law.

812. (*Lord Overstone.*) Suppose I put it this way, that a person takes out a Patent for an invention, and that it is afterwards disputed, and an endeavour is made to upset it on the ground that he had found that process secretly carried on in Thibet, and was not the real inventor of it, although he brought it into this country and placed it at the disposal of the public. Under those circumstances do you think it would be right to give to the person introducing it into this country Patent privileges, or ought they to be withheld from him?—I say that the case is so exceptional that we could not provide for it by

a general law. I think it would be a remarkably exceptional case.

813. (*Chairman.*) Would it not also be the fact, that in dealing with such a case the importer would take out his Patent as the inventor, and that those who sought to dispute the Patent would have such trouble and difficulty to prove that the invention was not original, that probably they would not think of disputing the Patent?—It might be so.

814. (*Lord Overstone.*) Still, the question is this, whether, in the case of an ingenious and valuable process brought into this country under those circumstances and patented, is it expedient that you should allow the objection to that Patent to be valid which was founded on the fact that he had discovered the process in use in another place, and had only brought it into this country?—There appears to be a merit which deserves a reward in having made a difficult discovery abroad and in having brought it here; but I fear that a general law for imported Patents would be a far greater evil than the one unfortunate case in which an individual would suffer injustice.

815. Still, keeping in view the great object of Patent privileges, namely, to stimulate discovery and to secure the knowledge and benefit of it to the public of this country, do you think that Patent privileges generally, and under the circumstances stated, would or would not tend to stimulate the discovery of inventions in existence in distant places, and so give the benefit of them to the public of this country?—I should say that we do not want any such stimulus to the discovery of such Patents.

816. You think, on the whole, that the benefit arising from such a process would not be a sufficient compensation for the doubts and difficulties that would arise?—Yes.

817. (*Mr. Grove.*) Another alternative I understood you to put was, that if you permitted an importer so to bring Patents from France or from America of inventions which we should see in the Journals in the following week or month, instead of stimulating invention it would have the contrary effect?—Just so.

818. (*Lord Overstone.*) Suppose the case of a person travelling in some comparatively barbarous country, who observes a process which he is sagacious enough to know is really a most important medicinal process unknown in this country, that he possesses himself fully of the nature of it, has practical evidences of its effects, and brings it to this country. Do you think that such a service as that should entitle him in justice to some Patent privilege upon grounds of public policy?—I think it might entitle him to a public reward, but, as a matter of policy, I should not therefore extend a privilege to imported inventions. I think the cases put are very strong, but very exceptional.

819. (*Vice-Chancellor Wood.*) If such a tribunal as you suggest were established, I suppose you would think it might be left to them to grant occasionally a limited or inferior right, with respect to its duration, in such a case as that which has been referred to?—If a tribunal could be trusted with an exceptional power of that kind; but I do not know whether it could be.

820. (*Lord Overstone.*) Suppose Dr. Jenner had discovered vaccination in a foreign country, and had introduced it into this country, would it have been, in your opinion, wise to grant him a patent privilege?—No. I should not think it right to give him a Patent privilege in that case.

821. (*Chairman.*) Do you consider that it is expedient that Patents should be granted to foreigners residing abroad, or to their nominees in England?—Certainly. The same equity which has extended copyright of all kinds to different countries would render that absolutely necessary, I fancy.

822. Is there any other point to which you wish to call the attention of the Commissioners?—Yes. I wish to make one further observation, which is, that

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you do allow an extension of a Patent beyond 14 years at present to be a matter of decision before a competent tribunal; and I was going to suggest that, supposing you will not recommend, or the country will not adopt, a Court for the original granting of Patents, you have at the present moment certain terms upon which, at the option of the Patentee, a Patent is extended for a further period of years. If a Court is not appointed for the first granting of a Patent, I would still cling to the appointment of a Court for extending the time; that would have the advantage of not being an introduction of a new principle, but merely an application of the present principle of extending Patents beyond 14 years to the different periods for which an extension is now to be obtained; and the advantage of that might be that in the meantime a large number of indiscriminate Patents might have dropped of themselves. I throw

The witness withdrew.

Adjourned till to-morrow at half-past 4 o'clock.

Wednesday, 4th February 1863.

PRESENT :

The Right Hon. LORD STANLEY, M.P.
The Right Hon. LORD OVERSTONE.
The Right Hon. SIR WILLIAM ERLE.

VICE-CHANCELLOR SIR W. PAGE WOOD.
HORATIO WADDINGTON, ESQ.
W. R. GROVE, ESQ., Q.C.

THE RIGHT HON. LORD STANLEY IN THE CHAIR.

Mr. J. Platt,

4 Feb. 1863.

Mr. JOHN PLATT examined.

826. (*Chairman.*) You have been, I believe, for many years a very large manufacturer in Oldham?—Yes.

827. And you have employed, in various capacities, several thousand workmen?—Yes.

828. In the course of your business, I believe you have taken out a very large number of Patents?—Yes; and I continue to do so down to the present time.

829. Are the Patents with reference to the machine making department, or in what branch of business?—They are principally for machine making, but they are not entirely confined to it; I am the proprietor of many other Patents which are not connected with machine making, for instance brick-making.

830. Have you also been frequently engaged in litigation in defending your own Patents or in resisting the claims of others to Patents?—I have.

831. The Commissioners may take it, that from the nature of your business you have for a considerable number of years been conversant with the working of the Patent Law?—Yes, I have.

832. Have you ever considered the question of the cost of taking out Letters Patent?—Yes, and I see no objections at all to the present system; I think that the late improvement in the Law was a very wise and a very good one. I know that it has been sometimes stated that the price of a Patent in a very great measure has prevented a poor man from taking out one, but I believe that that is entirely a fallacy. I know from my own experience as I am often in communication with working men who have any inventions, that the price of a Patent is never any difficulty, and the money is always found for them.

833. You do not think that, practically speaking, in any department of business the cost of taking out Patents has prevented any valuable invention from being brought into use?—I should say not one.

834. Have you ever heard any complaints made of the manner in which the payment is made?—No; I think that the present mode of payment is a very good one.

835. You are aware probably that it has been proposed that instead of a certain sum being paid at the end of a certain number of years, there should be an annual charge extending over the whole or a part of the time?—Yes; but I do not see any practical advantage in that whatever. It may be observed

that out as a suggestion in case the others could not be carried out.

823. (*Mr. Grove.*) That is to say, you would make it incumbent upon a Patentee, when he came to make his second payment after the three years, to make out a case before a Court, and also at the end of seven years, and so on?—Yes. I hold that that is not a new principle, for you at present do it beyond the 14 years.

824. (*Chairman.*) With this difference, that an extension beyond 14 years is, as I take it, altogether an exceptional proceeding, and a very rare one?—Not rare. The applications are extremely numerous, but the cases which are successfully established are comparatively few.

825. (*Vice-Chancellor Wood.*) There are very few granted, but many applications are made?—Yes.

that now at the end of three years, when the largest sum has to be paid, the Patent is either made or it is worth nothing. Up to that time the amount to be paid is no hindrance to any Patent being taken out.

836. It is your opinion therefore upon that part of the question that no change in the Law is desirable?—I do not see any decided advantage to be gained by it.

837. Another question has been raised of this kind, whether, before a Patent is granted, there should be a preliminary investigation of a more searching character than that which at present takes place?—Yes; and I entertain a decided opinion about that. I think that the present system of granting Patents is such that I scarcely know how to describe; it is certainly taking the money of the public without any advantage, in this sense, that the present Attorney General, or any Attorney General, on applying for a Patent under the present system would grant, perhaps, a dozen Patents for the same thing on the same day, not knowing that they were the same Patents by a mere alteration in the phraseology, or of any word; in fact, I have known when I have had a Patent refused, and have not known the cause of the refusal, that by altering a word the Patent has been passed a few days afterwards.

838. Your complaint in the particular case, is not that Patents pass without inquiry, but that the inquiry is not of a satisfactory kind?—I do not think that in many cases there is any inquiry at all; it sometimes happens that there is one; but even when there is an inquiry, by the mere alteration of a word, or the change of a sentence, the same Patent is granted, and it appears to me that there is no just system unless you have a proper preliminary examination by a tribunal established for that purpose, and which ought to be composed, in addition to a barrister, of scientific men. I do not say in what precise terms. I think further, that upon any application for a Patent being made, no application should be received unless it was accompanied by a model, where that was practicable, and where it was not practicable, that it should be accompanied by Drawings, illustrating and coloring those parts that were new or intended to be patented.

839. Then do you propose that the judgment of such a tribunal as you suggest should be final, so far

as regards the rejection of a Patent, and would you give to an intending patentee any power of appeal in the event of his claim for a Patent being disallowed?—Yes.

840. To whom?—To the same party; but to appear by counsel to explain the reasons, to give a proper explanation, and to hear the reasons, why the Patent was rejected; in fact I have had several Patents taken out in America, and it is not long ago since I had one refused; afterwards I sent further information, and the party appeared before the same tribunal, and after explanation and more explanatory notes, the Patent was granted. I can conceive very great hardship being done by placing the power entirely in the hands of any tribunal to decide as to whether a Patent is good or bad, without some effort being made for the party to appear to explain it.

841. You would propose first of all that there should be no argument on the subject, and that the claim for a Patent should merely stand on its own merits; but if it was rejected then the party might apply again with the advantage of having his case argued?—Yes.

842. But in that proposed plan, who would appear on behalf of the public. There would be, as you propose it, an argument on the one side in favour of the patentee, but I do not see that you suggest that there should be any person on the part of the public to present to the tribunal the other side of the question?—I consider that the tribunal itself would protect the public, and I look upon that as a most important thing that the tribunal should do that.

843. I infer from what you have said, that you consider there is practicable inconvenience now in the multiplicity of useless and frivolous inventions for which Patents are granted?—Yes; my opinion is, that if such a preliminary investigation as I have mentioned took place, nine out of every 10 applications would be rejected, and go no farther.

844. (*Lord Overstone.*) You mean of those that are now granted?—Yes; if a proper preliminary investigation was made by scientific men nine out of every 10 applications in my opinion would be refused.

845. What do you think would be the effect upon the vast number of disappointed applicants if they were so peremptorily rejected by this tribunal?—It is just in this way now, that it is positively dangerous for a person engaged in business in a large way as I am, considering the number of Patents that are granted so indiscriminately, I say it is very difficult for a person to carry on business at all, for the present system seems to be to grant to all applicants Patents, leaving the parties to fight it out in the country afterwards as to whether there is novelty or not.

846. Can you give the Commissioners any instance from your own experience, in which you have been put to inconvenience in that manner?—I can. The case that I am about to allude to was the case of *Jones v. Hacking*, and it occurred in this way:—The 14 years of the Patent had expired, and five years, so that it was 19 years from the date of the Patent before the action that I now speak of was commenced. It was commenced by the parties, and I may say that the person who was the original patentee was a person of no money whatever; but he persuaded some party, I believe some lawyer, to advance some money in order to take up this case. I know that many machine makers, rather than contest the case, absolutely paid the money—the different sums of money that were demanded of them. I came up this afternoon with a gentleman in the train from Manchester who mentioned this case to me, and who stated that one of his own clients offered as large a sum as 2,000*l.* in one case to settle the matter. I found that the system was to attack the smaller men, and by that means to extract money in different ways, and there have been a number of instances in which parties have paid in that way. Although not attacked in this instance myself, a neighbour of mine was; I looked over his evidence, and I told him that I thought I could amend it very much, and I told him further that I would

be a party to the expense; I said let me take the case in hand, which I did. Now 19 years is a very long time for a machine, and this machine was of a very valuable kind, hundreds upon thousands had been made during the 19 years, and if this person could have established his claim to a Patent right, he would have made a very large sum of money, so large as to be almost incalculable. It so happened that I recollected when it was brought to my memory, that we had made a number of those machines long before the date of that Patent, and the difficulty then was to prove that such a machine had been made, for in 19 years, speaking of cotton machinery, such machines would probably all have been broken up; scarcely any were to be found in the country; but it so happened that in one instance a very large firm of manufacturers in Preston, of the name of Horrocks, Miller, and Company, had two or three of these machines still left. I got Mr. Miller to come up to London, and we brought one of these machines with us; it was taken into Court, and in a moment their own witness admitted that this was precisely the same thing that the other parties had been paying royalty to this man for, and the case was at once abandoned by Mr. Webster, who was then conducting it. The moment he saw this machine, and Mr. Miller and myself were placed in the witness box, the case was abandoned. I mention this instance to show the necessity that there is when a Patent is applied for that there should be some record made. I find in a majority of instances that the drawings are not a sufficient record; and I think if there could be a museum established in which a model, for instance, of this machine to which I have just referred when the Patent was granted should be placed, there would be less difficulty, as there would have been less difficulty in proving the case to which I have referred before; it was a mere accident that it was proved, and only because it turned out that just one machine was in existence, although, as I say, it might have cost me a very large sum of money, and others too.

847. (*Vice-Chancellor Wood.*) Had your own previous machine been patented?—No.

848. Then you would not have had a model of that?—I am speaking of that as a model.

849. I thought you said that there would have been a greater facility in proving the existence of the old machine by a model?—Yes, and so there would as a general rule; I gave that as an illustration, possibly it might occur the other way; but if you had models, they would be so easy of reference. In the case that I have referred to there was no record of the machine anywhere; it had become so altered in course of time.

850. (*Chairman.*) If I understand you, your proposal is that the preliminary investigation you have suggested should confine itself to the question of whether the Patent was really new or not?—Yes.

851. You would not go into the further question, whether the Invention proposed to be patented was of any value or not?—No; I would simply ask whether it was new.

852. As I understand your plan it comes very much to this, that you would have the course of proceeding adopted with regard to all Patents which is at present adopted in the case where an application for a Patent is opposed?—Yes.

853. But I presume that you would not propose that trials should take place, as you suggested, before the law officers?—No; I think it would be better that they should be assisted by some scientific persons in a case of that kind; however, I have not matured any plan in my mind.

854. You would confine the tribunal to the simple question, has this invention been patented before or not?—Yes.

855. I put that to you so because it is clear that such a tribunal could take no cognizance of the existence of a similar invention elsewhere if it had not been patented?—No; I think that that limitation would be quite sufficient. I do not think they could

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be expected to know what had taken place elsewhere.

856. (*Lord Overstone.*) After that, do you think that any invention that had been in use before ought to upset that decision, founded only on the knowledge of what had been patented before?—Certainly, if it was found afterwards to be in public use, then of course the law would deal with that.

857. (*Mr. Grove.*) You would have a *primâ facie* case of novelty made out?—Yes.

858. Then, if afterwards it was found that it was not new, it would have to be contested in the usual way?—Yes.

859. (*Chairman.*) You would altogether exclude from consideration at that stage the question of the value of the invention?—Yes. I do not think that that ought to come under the cognizance of the officers.

860. (*Mr. Grove.*) Would you carry out the question of the value of the invention to any extent. Suppose, for example, a very frivolous invention, such as an inkstand of a new shape, would you grant a Patent for that, or for a toy?—I do not say absolutely that.

861. But that is the question, whether you would put any limit, or grant Patents for any things, such as tooth brushes or hair brushes?—I should certainly refuse frivolous patents such as those indicated.

862. (*Mr. Waddington.*) Is not the system in America almost exactly what you have described?—Yes, it is. I know from experience that that was so in my own case, and I believe it answers remarkably well.

863. (*Lord Overstone.*) You say that in America it answers well?—Yes; that is, it prevents many frivolous Patents from being taken out.

864. Is it not the fact that there is some considerable evidence from America to show that so far from answering well it has broken down?—I did not know that; that is, in reference to this particular tribunal. I believe that there are other parts of the American law that are called in question.

865. It is your opinion, then, that a tribunal might be constituted, consisting partly of judicial knowledge and partly of technical knowledge, which should be sufficient to exercise a complete control over the question of the novelty of a Patent, and in a manner to be satisfactory to the public?—I think so. When Patents are opposed I know that very great good has resulted; for when the cases have come to be tried the knowledge of the opposition has been of very great service, as the parties have been then obliged to give a more detailed description of the inventions they are applying for, and that has limited them very much in their application.

866. (*Mr. Grove.*) How would you provide for the cost of models; the working models of machines are very expensive things?—In America they are principally made in wood.

867. Do you mean what are called diagram models?—Yes, I think that they limit them to that; I forget now, but I think they are about one-eighth of the size of the original machine itself.

868. Are they models of the whole machine, or merely of the part, so far as it can be separated, that is patented?—Where an invention is entirely new they are generally models of the whole machine; but where, as I am sorry to find is the case when it is a matter of combination, then it is not so general.

869. Would not that add considerably to the cost of Patents, obliging the patentee to deposit a model?—No doubt it would.

870. (*Chairman.*) Considering that about 3,000 Patents are taken out yearly, would not the accumulation of models in a few years become enormous?—Yes; but if a person had a knowledge that the investigation spoken of was to take place, you would have so many fewer Patents applied for; and in lieu of 3,000, you would not have above a sixth of the number, perhaps.

871. (*Mr. Waddington.*) I believe that a very

large proportion finally drop through, as many as about nine-tenths, before they come to the time for paying the 100*l.*?—I have seen it so stated.

872. (*Mr. Grove.*) You have referred to a case in which you were a litigant; have you, in addition to the litigation, found practical inconvenience result from threats or menaces being made by patentees in your business as a machine maker?—I think that there is scarcely a week, certainly not a month, that passes but what we have a notice of some kind or other of things that we have never heard of in any way, and do not know of in the least, that we are infringing upon them, and the difficulty is to get at any knowledge; we may be now infringing, and may have been infringing for years, and a person may have been watching us all the time, and when he thinks that we have made a sufficient number he may come down upon us, and there is no record. If a thing is entirely new there is a record by getting a description; but what I mean by a record is this,—A very large number of Patents are now taken out for what is termed a combination of known things, and known things for the same purpose, and the descriptions of those Patents are generally so bad that it is impossible to tell the parts that are actually patented; it is only when you come into Court or after making some compromise rather than go to that expense that you ascertain the fact, and very likely they themselves in many cases do not know the parts that they have actually claimed. It appears to me that as to that question of combination, the granting of Patents for things to do precisely the same work in the same machine, with the addition perhaps of a chain or a couple of bolts, or the form of the lever changed, a straight lever made into a compound one; in matters of that kind it has become a very serious question as to conducting a large business.

873. That, as you see, is a very difficult case, because a thing may be very minute and inappreciable improvement; on the other hand, it may be a very considerable one; take, for instance, the case of the steam engine, where, by merely putting in a peg it will enable the valves to be self-opening and self-closing, instead of requiring a person to do it by hand?—But that is a very different case to what I have given.

874. (*Mr. Waddington.*) It would be rather an alteration in the law that you would propose, I think?—It rather approaches that.

875. (*Sir W. Erle.*) The Tribunal would inquire into the utility if it were a new combination, at least. I think, that is the principle you suggest; but a new Patent for a combination, by using a new form of lever, while it might really be a new form, might be of no utility?—Yes, it may be so, and often is so.

876. (*Lord Overstone.*) Has your attention been directed, or has it come within your observation, to trace the working of the preliminary examination in other countries than England?—Only so far as regards America; the other countries besides England are France, or Belgium, or Sweden. I have never had a Patent refused in any of those countries, and I never gave any Preliminary Specification beyond what I gave in this country. It is in evidence before this Commission that in Prussia and in America, in Austria, Sardinia, and in Belgium where a preliminary system has been tried, in every one of them it has been found to be a failure. It is stated that in the United States Judge Mason, who was lately a Commissioner of Patents reported against the preliminary examination, and I think there is in another part of the evidence a very full statement of the actual words and language used by several persons in America, who have been concerned in endeavouring to carry out that preliminary investigation. I do not know whether there is a return as to the present system which they have in America. I suppose that that is a recent publication. As to Prussia, I do not know that I ever knew a Patent granted, for every application that I ever sent there has been refused.

I have never been refused in any other places, in France or Belgium, and to my knowledge there is no preliminary examination.

877. (*Mr. Waddington.*) In France it has been abandoned, I believe?—Yes.

878. (*Chairman.*) Do you think it would be necessary and possible to define more accurately than at present what should be the subject-matter of a Patent?—I have thought about that but I must confess that I do not see my way to it, excepting so far as this, of course there are what are termed new inventions, such, for instance, for the sake of illustration, as making bricks from dry clay which had never been done before, or the introduction of air into metals, as in the case of Bessemer's Patent, those are what are called new inventions, and those, there can be no question about, are inventions of that character for which Patents would be at once granted. Then there is another kind of inventions, such as applications of known things to other purposes, for instance a steam engine may have a very good motion attached to it and that motion shall be applied to another machine; that appears to me to be a patentable subject, and with these applications of known things, there can be no doubt that Patents ought to be granted; but the difficulty, and I admit it is a great one, is when one comes to a great combination of known things. I think I would not grant a Patent for such a combination at all; I mean for a combination of known things used before in the same machine.

879. (*Mr. Grove.*) Not if they produced a new and valuable result, and if the combination was new?—In nine cases out of 10 they produce the same result.

880. Suppose a combination is new and produces no valuable result?—In my own mind I see so many evils arising from the word "combination" that I would rather abandon it altogether, even at the risk of losing some valuable ideas, or at all events I would give them to the public rather than that you should grant a Patent for a combination.

881. Do not you get into this difficulty, that so many inventions are only combinations as the elements of nearly everything, mechanically speaking, are old inventions which are almost always combinations?—I would simply limit the Patent Law to that extent. I think there are so many Patents granted that it is a great question with me I confess, if Patents for these combinations are to be granted, whether it would not be better to abolish the Patent Laws altogether, as it becomes such a nuisance in conducting a large business.

882. Would not that rather lead you to think that the Tribunal which conducted the preliminary investigation should pronounce upon a combination as upon other things whether it was essentially a new combination or a new result rather than abolish the Patent Laws?—Perhaps that would be one way of meeting the difficulty, I see no objection to that.

883. (*Lord Overstone.*) In what sense do you use the word "combination," is it not the great principle of philosophy that all power which a man has over matter consists in combination only?—Yes; but the sense in which I use the word combination is this, I hold two things in my hand now, and these two motions, as I will term them, are each performing in the same machine a distinct motion, and then a Patent is taken out for the combination of the two together by simply placing a chain or a lever across them; what they do separately they do when combined, and no more, and a very great number of Patents are taken out for that purpose, but there is no invention in it.

884. For your pieces of machinery suppose that you substitute two chemical agents, and that you bring them into combination and produce a new and unsuspected result?—That is a different thing altogether.

885. (*Mr. Grove.*) You are applying yourself to mechanical matters?—Yes, entirely.

886. (*Sir W. Erle.*) There are two classes of Patents, Patents for products, and Patents for improvements in machinery. As to the last, where it is

a new combination of old parts, you would exclude that claim from Patent right?—Yes.

887. (*Mr. Grove.*) For instance, the jacquard loom you might call a combination of old parts, because no part is absolutely new; but you would hardly say that the jacquard loom was not a good subject for a Patent?—No; but it is a new application.

888. Nearly all the inventions in machinery are combinations of old parts and adaptations of old mechanical improvements to new uses?—Yes; but you see there is a very great difference in the way that I put it. If you take the jacquard loom, the parts do not separately the same as I said these things did; it was certainly a combination of known mechanical parts, but not one of them did separately what the jacquard loom did itself. I alluded more especially to the case in which the two motions themselves were doing separately what they would do conjointly; it is for the combination that a person goes and takes out a Patent; and I say that that is one of those cases so difficult to comprehend that a person may be making these machines for years, and not know that any combination of that kind has been patented. I believe that many difficulties would be overcome by a proper tribunal; in that case they would have power to sift all matters as to whether they were patentable or not. I believe there is no doubt that a great deal of the difficulties felt now would be overcome by a fairly constituted tribunal.

889. (*Chairman.*) Have you anything further to add with reference to the preliminary investigation?—No.

890. Have you considered the further question of the manner in which Patents when attacked are defended before a court of law?—Yes, I have thought of that.

891. Do you think, upon the whole, that the present arrangements are satisfactory. I speak of that stage when you or any other manufacturer is brought into a court for an alleged violation of a Patent. Could that question of the validity of the Patent be tried in a more satisfactory manner?—Yes; I do not think that the present mode is satisfactory at all, by a jury. It appears to me that in bringing a case, as I very often have done, from the manufacturing districts to London, and then a number of persons being put into the box to try the case of a mechanical Patent of great intricacy that it is quite impossible they can understand it; the judges may understand it, and the counsel; but you never can make a jury understand it.

892. May it not happen that a question involving intricate points of mechanical construction would be tried before a jury who had never seen a machine?—I do not see how it is possible that they can come to a right decision, unless by accident.

893. Have you considered what you would propose to substitute for that system?—There are two ways, either by a separate court, or by arbitration.

894. Arbitration is a possible result as the law stands at present, is it not?—Yes; it is often done now; I know of a case without citing it, that had been for two or three years before the Court, and at last, after an immense sum of money had been spent it was referred to arbitration; the judges really would not try it, and I was not surprised at it, because it would have taken perhaps a fortnight to have tried that case. It is not possible, and I do not see how the judges can take cases of that kind with all the work they have to do; and independently of that, I do not think it is a proper mode of obtaining a decision upon a mechanical matter.

895. (*Lord Overstone.*) Do you think that Patent cases are a class of cases in which the ordinary advantages supposed to arise from jury trial may be safely surrendered?—Yes; and I have found that to be the general opinion of all the parties that I have come in contact with.

896. Have you considered what you would substitute in the place of that form of trial?—I do not say that I have. I believe that when you come to an

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arbitration, and scientific witnesses, you get at a very desirable result, in fact I believe that you get the best result, the only thing against it is the question of expense.

897. (*Mr. Waddington.*) I suppose you think that arbitrations are almost as expensive as trials?—I should say, quite so; the only thing is that you have a greater certainty of getting at a more correct decision.

898. (*Mr. Grove.*) Have you ever been a witness in a case that was referred to arbitration?—Yes, some time ago.

899. Have you found any objection from the necessary delay and the necessary intervals which take place between the meetings which are general and necessarily incident to an arbitration?—Yes.

900. Arbitrations must be postponed for Court business; for example, if any one of the parties engaged in it, either the arbitrator or the counsel on either side, or the attorneys on either side, happen to be engaged in Court, the case must be postponed and be made subservient to the business of the Court. Does not that occasion very great delay and inconvenience?—It is not only the occasion of great delay, but it is the occasion of very great expense; that is the only objection there is against an arbitration court; at least, an arbitration conducted in the present form. If you could have the same judge, for instance, and the same class of witnesses, and the same mechanical assistance or scientific assistance given to the judge or the umpire as you have in the case of an arbitration, it appears to me that that would be the best possible form of court you could have.

901. Have you found any other objection in arbitrations arising partly from the delay by which the parties are enabled to bring forward constantly fresh evidence to meet the difficulties raised at the previous meeting?—Yes.

902. There being an adjournment, for example, for a fortnight or three weeks, is there constantly a fresh burst of evidence to meet the difficulty raised at the last meeting?—Yes, it is so; and that prolongs the case very much; in fact, the case that I have in my mind now I have no doubt will cost the parties a sum of 4,000*l.* or 5,000*l.* I cannot see how it is possible for the verdict to be against them, for it has been a frivolous and vexatious proceeding from the beginning, and with the idea of extorting money.

903. (*Lord Overstone.*) Do you think that an experienced judge sitting with assessors would constitute a tribunal which, with all the advantages of arbitration, would be obtained without the inconvenience which has just been alluded to?—Yes, I do.

904. In that case have you formed any opinion as to the position in which those assessors should be placed; should they be merely advisers of the judge, or should they be called upon to give their verdict subject to affirmation or rejection by the judge; or how should the assessors be used?—I should say as advisers of the judge; I think that would be quite sufficient.

905. You mean that they should give public advice in court to the judge, but the decision to rest entirely with the judge?—Yes; I think that that would meet the case entirely, of course they would call witnesses before the court in the ordinary way.

906. (*Chairman.*) Do you conceive that inventors generally and manufacturers who may be interested on the other side would be content to have cases of this kind tried by a judge alone assisted by the advice of competent assessors?—I should always be most willing, and I always propose that course myself, rather than go into a court.

907. Is there any inconvenience, do you think, in the present practice, according to which in order to test the validity of a Patent, you must begin by violating it?—No, I do not think that that is often done; of course there are parties who sometimes go to repeal their own Patents; I do not know that that very much affects the present question, and I do not recol-

lect an instance myself in which a person has violated a Patent for the purpose of testing its validity.

908. (*Vice-Chancellor Wood.*) Suppose a person was desirous of embarking in a particular business which he thought might be embarrassed by a Patent, before he expended his capital upon the new business would he not desire to ascertain its validity?—I never heard of such an instance.

909. (*Chairman.*) There is now a mode of proceeding by *scire facias*, and by which it is possible to dispute the validity of a Patent without in the first instance violating it, but that mode is stated to be costly and inconvenient, and I wish to ask you whether in your opinion, it would be any advantage to a manufacturer who thought himself menaced by a Patent which had been undoubtedly obtained, to be able to attack that Patent directly, he being the attacking party instead of being, as at present, the defendant in an action for a violation of the Patent?—I do not think it would be right after a Patent has been once granted, to give any assistance whatever for the repeal of that Patent.

910. A Patent being once granted, you would be content with the establishment of such a court as you have proposed to try cases of violation?—Yes; and I would never give any facilities for repealing a Patent that was once granted.

911. (*Lord Overstone.*) That opinion is founded is it not entirely upon the assumption that greater precautions are resorted to in granting a Patent than at the present time?—Yes; and I would go farther than that; I think it would be very loose and undesirable to give any facilities to repeal any Patent; you must really believe that the party has got something new.

912. (*Chairman.*) You think it just that the presumption of law should be in favour of the patentee, provided his Patent has been obtained after a preliminary inquiry has been made?—Yes, I think so, most decidedly.

913. It has been suggested to the Commissioners by former witnesses that the objection which now exists to the Patent law might be removed if patentees were compelled to grant the use of their inventions to all applicants on the payment of a certain fixed rate. Do you think that that is a reasonable proposition or not?—I do not think that in practice there is any objection to it; what I mean is this, in practice I do not believe that any patentee really does object to grant a licence at the present time; I know that I never refused to grant a licence even to my opponent.

914. It pays you better to allow other persons to work your invention than to keep the exclusive use of it to yourself?—Yes; and not only that, but it prevents that person from trying some other mode to circumvent me.

915. (*Vice-Chancellor Wood.*) Are there not some large manufacturers who like to keep the monopoly of a Patent in their own hands, who obtain money and go on manufacturing without granting licences to others?—Yes; and I think it is a very unwise policy, and it often gets defeated. As a general rule I think it is to the interest of the patentee to grant as many licences as he can.

916. (*Mr. Waddington.*) Leaving the patentee to fix the price himself?—Yes.

917. Are you opposed to the mode by which a person might be compelled to grant a licence upon what might be thought by others to be reasonable terms?—Yes; because I think that would be interfering with a man's own property.

918. (*Lord Overstone.*) You have stated that a refusal to grant licences for a proper consideration would be very unwise on the part of the person holding the Patent; has it been a matter of experience with you that that view is generally taken by patentees?—As a general rule it has, but we meet with some exceptions; a case occurred the other day that was tried, and caused much unpleasantness between the parties concerned. There are some

cases of that kind, but I do not think they are very common.

919. Not so common as to require, in your opinion, any improvement in the form of legislation?—I think not.

920. (*Chairman.*) Would there not be very great difficulty if a plan of making licences compulsory were adopted in fixing the proper remuneration to be paid to the patentee?—I think it would be very objectionable.

921. (*Lord Overstone.*) Would it be possible, with any tolerable degree of justice or satisfaction to the public, to constitute any tribunal that could fix the price at which the patentee would be compelled to licence out his patent right?—I should not like to give an opinion in the affirmative upon that question. I can conceive, for instance, in the case of something of great public utility, and I might for the sake of illustration take Mr. Whitworth's gun; in a case of that kind he might wish to keep it entirely in his own manufactory, and refuse to let any one take out a licence, and in refusing to do that great public injury might result; but still, that is a very extreme case.

922. In every sort of monopoly right a complete power over the monopolized articles is invested in the holder of that right, but the ordinary price is found to be a sufficient inducement to bring his conduct into harmony with the public interest; is not that equally true with regard to Patents as to every other form of monopoly?—I think so; I think that his own interest is predominant to all others. I should not object to a clause myself, but I do not think it is necessary.

923. (*Mr. Grove.*) Another plan has been suggested, namely, to make it a stipulation at the time of granting a Patent, as in railway acts where maximum tolls are mentioned, that the patentee shall grant licences for a certain maximum price. The first plan suggested was that where a patentee refuses to grant a licence, the tribunal should adjudicate upon the price; the second plan was, that in granting a Patent a clause should be put in, so to speak, stating that a certain maximum toll should be taken upon granting licences. Should you object equally to that?—I see greater objections to that than to the other, for, when a Patent is granted, it may be worth very little, but afterwards it may turn out to be very valuable, and in fixing any amount it might be too little or it might be too much.

924. (*Lord Overstone.*) You are confident that no tribunal could safely be entrusted with the discretionary power of determining when granting a Patent what the royalty should be that the patentee ought to be authorized to charge for the use of it?—Yes; I should say that it would be very objectionable to confer such a power upon any tribunal.

925. (*Mr. Grove.*) You think that in practice it would be impracticable?—I do. I think it would introduce so many difficulties and interfere, in fact, with the property of the patentee. Practically I do not think there is any necessity for it, because they are very rare instances in which a patentee does not grant licences.

926. (*Vice-Chancellor Wood.*) Another suggestion was this, that at the expiration of three years, when a person is obliged to pay an additional fee, there should then be power, after a Patent had been worked, instead of the renewal being obtained as a matter of form, to require the patentee to make either a fresh application or an application of such a kind that he could not obtain the renewal without coming under terms to grant licences?—There is no question that at the end of three years it is then determined whether a Patent is either valuable or not; the extent of the value is no doubt ascertained by that time, although there are many instances in which that is not the case; for example, in the case of Bessemer's Patent; that Patent had been granted for seven or eight years, and it is only just now coming into use.

927. (*Chairman.*) Have you ever considered that part of the law which relates to the granting of Patents to those who import inventions from abroad?—Yes.

928. Do you think that that right of patenting inventions already existing in foreign countries, merely on the ground of prior importation, ought to be maintained. You are probably aware that as the law at present stands, any person having travelled in a foreign country and observing an invention there which is not used in England, may take out a Patent for it as though it was his own, on the ground that he is the first person to introduce it into this country?—That is very objectionable, I think.

929. You do not consider that with the great facilities for communication that exist at the present day, any such protection is necessary to induce manufacturers to import inventions from abroad?—My own impression is that I would grant no Patents, not even to a foreigner, or his agents, except to the original inventor, for an original invention.

930. And you would grant Patents to every person alike, whether a foreigner or otherwise?—Yes; I would make no distinction in that; I think we ought to encourage them to come here.

931. (*Lord Overstone.*) Does your opinion rest upon the conviction that an invention having been once made, and being in operation in a foreign country, it is sure, without any encouragement, to find its way into this country, and therefore any artificial encouragement of patent rights is not requisite?—No; I think this, that if a person residing in France or in America takes out a Patent, the same party, before it is made public in any of those countries, if he makes an application and secures a preliminary investigation here, should be entitled to do so, that is, before publication.

932. The question goes further than that; for example, take the case of an Englishman travelling in a foreign country, and there observing some process which he thinks highly ingenious, and which, if introduced into this country, would be exceedingly useful; introduces it here, and takes out a Patent for it here?—That is to say, not patented in that country.

933. Patented or not patented there?—I think it would be objectionable if it was the subject of a Patent there; if not, I think it would be perfectly legitimate.

934. You do not object to the principle of granting Patent rights in this country to an Englishman who imports an invention from a foreign country, provided that it has not been patented in the inventor's country?—No.

935. Do you justify that upon the ground that it is a legitimate encouragement given to the introduction of inventions which practically has the same effect as an actual invention in this country?—Yes, in this way, that whether a person is travelling abroad or not, as in this country many ideas occur to a person who is travelling from one place to another; for example, if I were to go into a linen or woollen manufactory, I might see something that would be a very great advantage as applied to cotton, and the same might happen with a person travelling on the continent; he might see something, if he were a manufacturer, that was not exactly like his own manufacture, but something that was entirely different—for example, a different fibre or a different staple altogether; still he might think that it would be very useful, and it would be very useful if applied to his own manufacture; and I think that that would be a perfectly legitimate subject for a Patent.

936. If a person in travelling in this country sees an ingenious process, and takes out a Patent for it, that Patent would be easily upset, on showing that it had been previously in operation. But with regard to the question now under discussion, a Patent taken out in England would not be upset upon the ground of previous practice in another country. I wish to ascertain whether there is, and if so, what distinction

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in the two cases. Why should the previous practice in a foreign country not upset a Patent taken out in this country, when, if the previous practice had existed in this country, it would upset it?—I see now the force of the question; but in that sense I do not think it would be the subject of a Patent. I would treat a foreign country as I would treat my own. If the thing was used in some manufacture or in some machinery, and it was simply an importation, I do not think it would be the subject of a Patent at all. I thought you put it in this way, that if a person saw, in travelling in a foreign country, something used for another purpose, and he saw that it might be successfully applied to his own manufacture, that that would be a perfectly legitimate subject for a Patent.

937. That would be a new application?—Yes, precisely.

938. But where it is merely an introduction into this country of that which has previously been in action in another country, you think that, under no circumstances ought the introducer to obtain a Patent right?—Certainly not.

939. (*Mr. Waddington.*) Then, supposing a person takes out a Patent in his own country for an invention, and some one else brings it into this country, ought he to obtain a Patent?—No; I do not think that ought to be permitted.

940. Ought a person that brings in a foreign invention to obtain a Patent for it when the foreign inventor has not obtained a Patent for it?—I think you would find so many evils the other way, that it would be better to risk them.

941. (*Lord Overstone.*) Upon the whole, you think that no Patent right should be granted for the importation of a foreign invention, except to a foreigner who had previously patented it in his own country?—Yes; to himself or his agents.

942. (*Vice-Chancellor Wood.*) And even then, that his application should be made simultaneously?—Yes; before publication, or within a certain time. I do not think we ought to give encouragement for Patents to be taken out indiscriminately.

943. (*Sir W. Erle.*) Have you considered that the gain to the public might be the same, whether it was the invention of the party taking out the Patent, or merely the result of the observation of a traveller; suppose, for example, it was a secret like that of making colored glass at Venice, and that an Englishman, at great expense and with great skill, obtained a knowledge of the secret which the Venetians possessed, or of the dyes used in the Gobelin tapestry; and if he, by means of money, skill, and labour, acquired a knowledge of the secret, would it not be just as great a gain to the English community as if he had been the inventor?—Yes; but it would not be a thing of public notoriety. I think that all countries now have got Patent laws more or less, and if there is anything discovered, it is made known immediately to the public.

944. (*Mr. Grove.*) You think that there would be a risk of loss in not encouraging such particular discoveries, and that every person who was a mere letter carrier, so to speak, and who merely brought a thing from abroad, should have a Patent for it?—I think that we ought to be careful in guarding that.

945. (*Mr. Waddington.*) Would you allow a person in France to take out a Patent for an English invention, which had been patented here and not introduced into France?—I think that the French law would grant you a Patent under those circumstances.

946. (*Sir W. Erle.*) If you are the inventor or the agent of the inventor?—Yes. There is one clause in the French law which tells very much against the English people, and that is, that they grant you a Patent and compel you to make the machines in France; that is much to our disadvantage, and I know that at the time of the French Treaty I was examined before the Council at that time, and we made very great complaint of that before the Council sitting in Paris, that although they granted us a

Patent, still they compelled us to manufacture in France.

947. (*Mr. Grove.*) Have you at all thought of the point which has been suggested of making it incumbent upon the patentee at the expiration of the third or seventh year to apply to a tribunal for a further grant so as to make it something analogous to the prolongation before the Privy Council; that is to say, to grant a Patent for a limited time, making it incumbent upon the patentee to come before the same tribunal again for a continuation of the grant?—There is no doubt that it would be a great advantage at the end of seven years, three years would not be of much service; it depends a great deal upon what conditions you attach to it. I have had one or two Patents at the end of 14 years which have been renewed before the Privy Council for five years.

948. My question was rather whether it might not be desirable, particularly with regard to some classes of inventions which are comparatively unimportant, that the Patent should expire unless the patentee satisfied the same tribunal that the Patent deserved to be continued for, say, more than seven years?—I think that that is a very important suggestion.

949. Do you think that it would be practically beneficial?—If it could be carried out, it would be very beneficial. I do not quite see my way to carrying it out, but if there were no difficulty in it, it would be very beneficial, I think.

950. (*Lord Overstone.*) Upon the supposition that some more efficient power was given with regard to the preliminary investigation as to the novelty of a Patent, and that a more satisfactory tribunal for trying litigated cases were created, do you think that the Patent laws would then give reasonable satisfaction to the public?—Yes; I think that just those two questions are the only two questions as to which we find any practical disadvantage. The indiscriminate granting of Patents now is a very serious question for people carrying on a large business. And then, again, there is the next question as to the Court, and a case being brought for trial into Court by parties who commence different attacks upon you, perhaps with no other motive but to extract money. If a proper Court was established for the trial of those cases, I do not think that those cases would be attempted at all. In the other case I feel quite satisfied that where there are ten Patents granted now they would be reduced to one.

951. (*Chairman.*) Is there any other remark that you wish to make with reference to this subject?—No. It was a very important question that was raised by Mr. Grove just now, but still I think it altogether depends upon the other two questions. If the other two Courts were fairly constituted I do not think there would be much difficulty.

952. (*Vice-Chancellor Wood.*) You speak of two Courts; you would not, I presume, hand over the trial of the Patent to the same Court that originally decided upon the granting of it?—No, I do not think that would be right; even in the first case I should be sorry to place a power in the Court without appeal.

953. (*Mr. Grove.*) Supposing a person, whoever he was, or a tribunal, refused the second application, would you give any appeal to another tribunal?—No, I do not think there would be any reason to complain after the matter had been fairly argued and the case stated.

954. An appeal to the same person would hardly be an appeal; you would, I presume, not have an appeal to any higher official, such as the Lord Chancellor or the Privy Council?—That is just a question to consider, and I am not quite prepared with an answer upon that. All I would say is this, that it would not do to constitute that Court entirely without some power of appeal. I know that in America it is the rule that they can appear before the same Court with counsel, and that often Patents that have been refused are granted by the same party. There may

be objections to that which I do not know of, but I found no difficulty upon a re-application.

955. (*Chairman.*) Supposing it were decided not to adopt your recommendation as to the first granting of Patents, do you still think that the mode you have proposed for the trial of Patent cases would be a considerable improvement upon the present state of things?—No question about it; but I have a very strong opinion upon the other. I would rather see a number of Patents refused myself at all events. I mean this that where they are real inventions they ought to become a benefit to the parties inventing; but for mere changes such as I have described, and in which there is no invention, I think there should be some check, and a Court of that kind would check it very materially.

956. (*Sir W. Erle.*) Supposing no alteration is made in the present tribunals for trying the validity of a Patent, would it be any improvement if Patent cases were tried in the machinery counties, if I may use such a word, Lancashire and Yorkshire, for the law requires the action to be tried where the cause of action arose, and the tribunal to be in those counties, and there would be plenty of persons of skill on the jury?—In one sense it would not be a matter of

much importance, for there are many parties resident in the two counties of Lancashire and Yorkshire who have very little mechanical knowledge, at least I mean to say that they are each confined to their own vocation, and they would not, perhaps, have much general knowledge.

957. (*Vice-Chancellor Wood.*) Would there not be great risk in those counties that some of the jurymen might have a local connection with the patentees?—Yes.

958. (*Chairman.*) I take it for granted that if you had a special Court for trying Patent cases, that Court must sit perpetually in London?—Yes, I think that is the best place; for you have in London both counsel and scientific men.

959. (*Vice-Chancellor Wood.*) Your principal objection seems to be to a jury?—Yes.

960. (*Sir W. Erle.*) Do you propose to have a special Court or a judge who is taken from his ordinary duties, but who would sit for the trial, with the assistance of scientific men, or to have a special Court, as it has been called, appropriated exclusively to Patents?—I think a special Court appropriated exclusively to Patents decidedly.

The witness withdrew.

Tuesday, 10th February 1863.

PRESENT :

The Right Hon. LORD STANLEY, M.P.
The Right Hon. LORD OVERSTONE.
The Right Hon. SIR WILLIAM ERLE.
VICE-CHANCELLOR SIR W. PAGE WOOD.
SIR W. ATHERTON, Q.C., M.P.

SIR HUGH CAIRNS, Q.C., M.P.
W. R. GROVE, ESQ., Q.C.
W. M. HINDMARCH, ESQ., Q.C.
W. E. FORSTER, ESQ., M.P.
WILLIAM FAIRBAIRN, ESQ.

THE RIGHT HON. LORD STANLEY IN THE CHAIR.

WILLIAM ROBERT GROVE, ESQ., Q.C., a Member of the Commission, examined.

961. (*Chairman.*) The Commissioners are anxious to obtain the advantage of your experience as a counsel who has been long engaged in Patent cases, and we wish therefore to put some questions to you. You have for a good many years been much engaged in Patent cases?—For a good many years. I think I may say 20.

962. You have, therefore, had experience of the working, both of the old law and of the law as it was amended in 1852?—My experience has been rather more of the law since its amendment than of its previous working.

963. First, as to the question of costs, do you think that, looking at the question generally, there is any objection, either to the amount of the payment at present required from Patentees, or to the manner in which the payments are demanded?—I think that if I had to legislate now for the first time, I should put the first cost of obtaining Letters Patent higher than it is now; but as the sum has been fixed, and as there is no general complaint of it, I am not in favour of altering it. I will state the reasons why I think of the two it would have been better to have had the first cost a little higher than lower. We have at present, and had before the Patent Law of 1852, no check, I may say, upon the number of Patents which are granted but the pecuniary one. It is true that that is a very rough check, and may occasionally operate hardly upon a poor inventor; but I do not believe that any system of law could be devised which would enable a poor inventor in this country to fight his own battle. He can only fight it by interesting some capitalist, more or less wealthy, in the probable promise of his invention; and the fact of there being a money payment for a Patent would be a somewhat rude test, it is true, but still a test of the merit or promise of the Patent, because, in order to get any capitalist, or any person who has sufficient funds, to undertake it, the inventor must first of all

satisfy him that there is promise in the Patent. The money payable upon Patents would, therefore, to a very considerable extent, shut off a certain number of them, and those, I believe, mostly of a very inferior character. I agree with Mr. Platt that any invention of merit would never in this country want a person to take it up, and I believe that if the invention was one of great merit, and no person could be found to take it up, no poor inventor could force it upon the public, or fight his own battle. Therefore I do not know that, as the matter is generally done at present, any hardship, further than that which is unavoidable, follows the payment which is imposed upon Patents. As I have said, I would rather have given an increased sum for the first payment; the two other payments of 50*l.* and 100*l.* I do not object to, but I would increase the first payment if I were now framing a scale for the first time. As, however, the present scale has been in operation, and has not been substantially objected to, I would make no alteration in the cost.

964. Is not the objection to your theory that all inventions must be worked by a combination of the inventor and the capitalist this, that in order to obtain the assistance which he requires from the capitalist, the inventor must disclose his invention, and it is then optional with the other party what amount of remuneration he will give the inventor, or whether he will allow him any?—That may be some reason for a cheap provisional deposit, but a mere deposit as a guarantee to the inventor might be easily arranged. The distinction which I would take would be this, that it would not inflict any harm upon the public. Assuming that a slight sum was paid for recording an invention which might ultimately be matured into a Patent, and that then a greater sum was paid, it would remedy the difficulty of the inventor disclosing his invention, while at the same time, if he did not get it taken up, and it never came into operation, the matter would be dropped, and the public would not

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be inundated by a great number of Patents; but I think that it would not be worth while to make an alteration, as the other system has worked moderately well, and as I do not find any substantial complaint of the cost of Letters Patent, although there are some who advocate the granting of Patents almost without any payment. The general body of manufacturers seem to think that the present system, as far as cost is concerned, does not work badly.

965. (*Mr. Fairbairn.*) Is it your opinion that an increase of the first instalment would have the effect of deterring people from coming forward with frivolous and useless inventions?—I think that it would; it would be a very rude test, and undoubtedly an imperfect one, but it would be some test. From my experience of the matter, I think that before the year 1852 there was a much smaller number of frivolous Patents than since.

966. It is a very prevalent opinion that the whole cost of the Patent should be reduced to something like what is necessary to pay the expenses of the officers in the different offices; an advance in the first payment might deter people from coming forward with useless Patents, but would it not at the same time operate against a poor man who could not afford to pay that sum?—For the reasons which I have stated I do not think that it would be of any use to attempt (and I believe that more harm would be done to the inventors by doing so) to make Patents attainable without any expense. There is also another reason, beyond the necessity of getting a capitalist to take up the invention, namely, this: poor men are very frequently uneducated, and they are frequently sanguine, particularly if they are of the inventor class, and if they were induced by the cheapness of Patents to patent their inventions, not only should we have a very great increase in the number of Patents, but many of these men would be for five or six years, or possibly more, dancing after a foolish idea. I believe that none but those practically versed in the subject know how difficult it is to disabuse the mind of a supposed inventor of his invention. I have frequently shown men the thing which they have supposed themselves to have invented; they go away disappointed on seeing it, but the next day they come and say that there is some distinction in their invention. They cannot give up the idea when it is once in their minds, and if you tempt them by too cheap a Patent, you do them a serious damage, you lead them away from their trade or occupation.

967. (*Lord Overstone.*) You think that a money payment necessarily involves some portion of that sober judgment which accompanies the distribution of money, but which is not necessarily associated with inventive faculty?—Yes, it obliges a man to think before spending his money, or to interest some other person who has a calmer judgment than he possesses.

968. (*Mr. Fairbairn.*) Would you diminish the amount of the subsequent payments?—No; I am quite satisfied with the amount of the subsequent payments.

969. What you have thrown out would increase the whole amount?—Somewhat. We have heard it put at 10%; that is the first payment. I think that it is hardly sufficient.

970. (*Chairman.*) I presume that you do not consider it advisable that there should be any surplus from the Patent Office, after covering the expenses of that department, available for purposes of general revenue?—No; I have not very much regarded that matter, but, in considering reforms in the Patent Law, I should not look to any question of general revenue. It might come in in this way—supposing that any separate Court or separate Patent establishment was created, it might be highly desirable to keep up the fees at such a rate as would pay those expenses, which are peculiar to the administration of the Patent Law.

971. The next question to be considered is that of a

preliminary investigation. Do you think that there ought to be a preliminary inquiry of a stricter character than at present, and, if so, do you think that it ought to be directed to the question of novelty alone, or to the question also of the importance and usefulness of the invention patented?—I certainly had, before I became a member of this Commission, an opinion, and I may say a decided one, in favour of a preliminary investigation; but I am bound to admit that that opinion has been somewhat shaken by the evidence which I have heard here, more particularly by the evidence (although to some extent different evidence has been given by another witness) that this system has been tried in America and has not been found successful; the evidence principally, I think, of Mr. Woodcroft, who stated that some influential persons connected with the matter in America had said that it was not successful. But my opinion, though somewhat shaken, still remains, not perhaps as strong as it was before, that it would be desirable to have a more careful preliminary inquiry. I would say that it is not a new principle, it is not new to the law of England that there should be an inquiry previous to granting Patents. It is the existing law, which I take to be this: a Patent is no matter of right, a British subject has no common law right to Letters Patent for an invention. It results from an exception introduced by the Statute of James, which, when monopolies were abolished, or rather when they were declared illegal, reserved a monopoly in Letters Patent for the first and true inventor of any new mode of manufacture. Therefore the law, as I take it, was, and is, that the Crown may *ex mero motu*, of its own will, grant Letters Patent for a new invention, but it is not at all bound to do so. The Crown, of course, cannot act in person in the matter, but, so to speak, devolves its functions upon its legal advisers, the Attorney and Solicitor General, and they are to inquire and advise the Crown whether a Patent should be granted for such and such an invention. I therefore take the present law to be that the Patentee should make out a *prima facie* case of promise (if I may use the term) in his invention, and upon that the Law Officer should advise the Crown to let the Letters Patent issue. The question then becomes not, is a preliminary inquiry desirable, because we have it, but is it desirable that it should be made a little more stringent than it is? We have heard that the general examination of the Attorney and Solicitor General (I believe previously to 1852 there was none, excepting in opposed cases) is an examination upon the face of the Provisional Specification as to whether it discloses any invention or not; although we hear that occasionally when a thing has been obviously very old the Law Officers have taken advice as to whether they should grant a Patent for it. I certainly think that that examination might be conducted either by them, or, if they have not time, by some other functionary, more strictly. I think that if, upon an examination, the thing were obviously old, or obviously, granting the Patentee's own statement of his case, of trifling value, Letters Patent should not be granted for it.

972. You would include the case of an invention being of trifling value?—I would, and the legal conception of it, if I may so term it, is this: the Statute of James, if I recollect the words rightly, talks of any manner of new manufactures within this realm. Now I certainly have never taken that to be intended to apply to mere changes in form or user of minute and insignificant things; I think that it applies to substantial manufactures—any great improvement in the manufacture of copper or iron, the introduction of such a manufacture as aluminium, the power loom, the Jacquard loom, the steam engine, and other things of that sort. I think that the inventors of those things should have Patents and should be rewarded. Although I knew that the Law Courts have come step by step to include a greater number of inventions, yet I should not call an improvement in a shirt frill, that is so say

a peculiar method of cutting the little puckered linen which is sewn and used for shirt frills, or a particular shape of the brim of a lady's hat (I am speaking of existing Patents), a proper subject for a Patent. I do not know that I can say that such Patents are not legal as the law is construed, but I think that they should not be granted.

973. (*Lord Overstone*.) Is it not the fact that our progress in machinery is really effected by a continuous process of small improvements, one superimposed upon the other, and ultimately leading, though by very infinitesimal steps separately, to a great progressive improvement in the end?—That very frequently is so, but on the other hand there are very frequently great jumps in those progresses. If you take the improvements in the loom, we have very notable ones, very distinctly recognizable steps, and we have also very minute ones which are hardly of any comparative value. If I could do such a thing (I do not say that it could be practically realized), I would exclude from Letters Patent those changes which would naturally follow in the ordinary user of the machines. I would not prohibit a tradesman from exercising the same ordinary skill in using his machine as we should all be expected to exercise in anything which we happened to make, or from changing its form.

974. Do you think that it would be possible practically to draw that distinction?—I think that to a considerable extent it would, and thus—I am assuming that the person who was entrusted with the duty would never refuse a Patent where its promise, assuming it to be successful, was great—he would only exclude such things as, even giving the inventor credit for everything which he proposed as a success, produced a very trifling change in ordinary matters.

975. (*Mr. Fairbairn*.) Do you think that the present system of investigation on the part of the Attorney-General is imperfect?—I think that it might be extended and made more stringent.

976. That could not be accomplished, I apprehend, without some officer or officers to advise him?—That question the Attorney-General, perhaps, could better answer than I could, as to how far the Law Officers of the Crown, without some assistance in that matter, could further extend their inquiry. It is a matter depending upon their power of disposition over their time. I myself see no other means of remedying what I certainly occasionally have had very strong cases of, and what Mr. Platt mentions, namely, the great number of Patents which are really of no practical value, although they may be of sufficient novelty to make them legally good Patents.

977. But all those Patents of a frivolous character and of very little value die a natural death, do they not?—Not all of them. They ultimately die, but they frequently in their short life produce a good deal of inconvenience.

978. And they crowd the Patent Office?—Yes, and they not merely crowd the Patent Office, but they inconvenience the tradesperson. We have heard from Mr. Platt how many applications of this sort he has. I have had this sort of thing happen to me. A person comes to consult me upon some little improvement which he has made in the articles which he commonly sells. He says, "I have produced this season a new pattern, and I have had a threat by 'A. or B. that I am infringing his Patent; what am I to do? I must either destroy 20*l.* or 30*l.* worth of articles which I have made, or I must go to the expense of probably 500*l.* or 600*l.* to defend 'a Patent action.'" It is possibly worth the Patentee's while to go the expense of an action, but not of the person who is making the articles; he had better destroy them.

979. (*Mr. Fairbairn*.) I am very frequently consulted by working men, and by all classes, in fact, to obtain an opinion as to whether their special invention is worth a Patent or not, and I generally tell them very honestly that I think it is not worth a Patent. Most of them go away thinking that I know nothing at all about it, and they go to a Patent Agent notwithstanding

that they have from me a distinct opinion upon a subject which I thoroughly understand, and they take out a Patent?—That rather confirms what I have stated, namely, the extreme difficulty of disabusing a man of the idea that he has an invention.

980. (*Lord Overstone*.) Do you think that the investigation as now conducted before the Law Officers of the Crown has any practical efficiency and value?—I think that it has some value, but I think that it might be rendered more stringent. It at all events ascertains, as I understand it, that the alleged invention has something upon the face of it—that it is not a mere trap. I think that the principal value of it is this, that it to some extent shuts off and prevents a class of cases which were originally productive of a great deal of evil, namely, mere fraudulent Patents, Patents taken out for the purpose of catching up other persons' inventions. I think that the present *ex facie* examination of the Provisional Specification by the Law Officers has had a very beneficial effect in putting a stop to that. I do not think that there are now in the field so many dealers in Patents, as they used to be called, as there were. I have heard a man state in the witness box when asked what he was, "I am a dealer in Patents."

981. You are decidedly of opinion that the examination by the Law Officers of the Crown is efficient and valuable?—I think it is of value, but that it might go further.

982. (*Mr. Forster*.) A suggestion has been made by some person interested in Patents, that there would be an advantage in having a permanent legal officer for the purpose, the Officers of the Crown being subject to change, thereby making more strict the precise rules with regard to obtaining Patents. Have you any opinion with regard to that point?—If the Law Officers of the Crown had time to attend to it I should be perfectly satisfied with that tribunal. It is a question of time. I do not think that the change in the Law Officers would be substantially injurious. If the changes were very rapid they might be injurious, but taking the average of changes as they have been, I do not think that they are substantially so.

983. (*Lord Overstone*.) I presume that the business must be substantially settled by the clerks of the Law Officers of the Crown?—That is so, to some degree, I suppose; but that question I cannot answer. I presume that the judging whether the Provisional Specification is upon the face of it sufficient must be done by the Law Officers themselves.

984. (*Mr. Forster*.) And you do not think that it would be an advantage to make the Law Officer who should attend to this particular matter, a permanent legal officer instead of the Attorney-General?—You must then have a new officer entirely. You could not, with our present political system, make the Law Officers permanent.

985. That has been a suggestion which has been made, that there should be a permanent officer for that purpose?—I do not see any harm in it.

986. Nor any particular advantage?—There would be this advantage, that, assuming that there is a more stringent inquiry, which I think is desirable, the Law Officers of the Crown have not time to enter upon it, and then there must be a third person, either an officer to act by himself, or an officer to report to the Law Officers, upon the subject of his inquiry—a sort of delegate of the Law Officers—or there might be more than one; you might have one for mechanical Patents and one for chemical Patents, who would be parties to report to the Law Officer, or who might be separate and independent parties to inquire into the matter.

987. Supposing that a Special Court was established for the trying of Patents, would it not be comparatively easy to attach to such a court such an officer?—Yes; but supposing that a Court was established, there would be a difficulty whether that Court could itself be entrusted with the preliminary work, which matter perhaps I had better reserve until we come to that question.

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988. (*Lord Overstone.*) Do you not think that in proportion as you would propose to increase the efficiency of the preliminary investigation you would strengthen, *pro tanto*, the argument for entrusting that preliminary investigation to officers specially appointed for that purpose?—If the preliminary investigation be carried far, you undoubtedly must do so. I take it that the present Law Officers could not give time to anything like a strict preliminary investigation. If assistance was supplied as has been suggested, you might have a preliminary examination by the Law Officers, going further than their present examination. There has indeed been a great change in the state of things before and subsequent to 1852. Before 1852 the general, and as far as I am aware, the universal practice was never to look at the matter, but simply to grant a Patent for any title that was asked, unless there was an opposition: they had only to look at the opposition to see whether it related to the same invention or not.

989. Can you explain how it is that this duty has been entrusted to the Law Officers of the Crown, which is hardly consistent with their functions, namely, to advise the Crown upon legal questions?—My notion of the origin of the matter is this: The Crown is empowered originally by law to grant Letters Patent upon the assumption that there is an invention. The consideration (if I may use that word, although there is no legal consideration) is that a party represents to the Crown that he has a good invention of a new manufacture, the Crown says, "I cannot, in person, inquire into it, but I delegate that to my legal advisers," and upon their reporting on it, the Crown grants Letters Patent. The origin, therefore, of the matter, to my mind, is that they are advisers of the Crown as to whether Letters Patent shall be granted.

990. (*Sir H. Cairns.*) Is not there another reason, namely, that the Crown grants no Letters Patent without the advice of the Law Officers?—That would be, probably, for the same reason, namely, that the Crown consults them.

991. Is it not the fact that the Crown is supposed to grant no Letters Patent except upon the advice of the Law Officers?—I presume that it would be so. I did not know as a fact that, for instance, the Crown took the advice of the Law Officers before granting Letters Patent for nobility.

992. (*Mr. Fairbairn.*) Do you not think that it would give very great facilities to the Law Officer provided he had the assistance of a person who was sufficiently conversant with mechanics and chemistry, and do you not think that a person, combining both mechanics and chemistry, might be obtained to advise the Law Officer?—I think that it would be highly desirable to have a person connected with mechanics, and another connected with chemistry to devote their time carefully to looking over these matters; and I should rather prefer that the Law Officers should have the decision upon them, because I should be more inclined to trust their decision, from their position, than the decision of a mere mechanician or a mere chemist, who might possibly be mixed up with the rival inventors of the day.

993. (*Vice-Chancellor Wood.*) Would you have the investigation *ex parte*?—Yes, as a general rule, but I see no harm in having it public. This is what has occurred to my mind: Supposing that there was an inquiry of this sort, and that there were circumstances which presented difficulty, and it was thought desirable that a tribunal for trying Patent cases should be resorted to, the Law Officers of the Crown might very well refer any questions about which their minds were in doubt to such a tribunal.

994. (*Sir H. Cairns.*) Would there not be this difficulty about that, namely, that you would have the preliminary question whether a Patent should be granted settled by a sort of anticipatory adjudication by a tribunal which might have afterwards to try the same question between an alleged infringer and the Patentee?—There would be that

difficulty, and there would be difficulties in every plan suggested. That difficulty would, in my mind, operate so as to be an impediment and a strong obstacle to the tribunal having the general disposition of the preliminary inquiry; but I do not think that the difficulty would apply by any means so formidably if it was only exceptional cases which were submitted to that tribunal by another party. I do not think that it would be an injury. If the tribunal recommended in the negative, of course, *cadit questio*, there would be no Patent; but if they recommended in the affirmative they would only recommend upon it as a *primâ facie* case, as in law where persons certify to a *primâ facie* case, and the only opinion to be given would be upon the question, is there sufficient case to grant a Patent? It does not at all prejudice the matter as to a subsequent inquiry. But there are difficulties in all these matters, and we must look at the balance of them.

995. How far would you make the investigation before an officer, with the assistance which you mention, conclusive?—I would have it subject to appeal, that is to say, the negation of a patent I think should be subject to appeal.

996. Appeal to whom?—Probably the present appeal to the Lord Chancellor, or to any of the superior Judges; an appeal to a Judge at Chambers would probably be a sufficient appeal.

997. (*Mr. Fairbairn.*) Is it not quite possible that all the knowledge which is requisite both in mechanics and in chemistry might be united in one person? We very frequently find that the same person is a very fair chemist and a very good mechanic?—In the case of persons who have attended to any one branch of science, I believe that, so far from their minds being limited to it, they are likely to know more of the other branches of science than persons who have attended to none, because they are themselves so inevitably mixed up, that you could find very few men who have devoted a good deal of their lives to scientific subjects who do not know a great deal of other branches besides their own; but still there are such ramifications that I think it would be desirable to have two distinct persons.

998. (*Vice-Chancellor Wood.*) Any additional expense in the preliminary inquiry would not, in your judgment, I presume, from your former statement, be much of an objection?—I think not; I think that there would be ample means to meet it.

999. (*Sir H. Cairns.*) With regard to a preliminary inquiry, what would be your idea as to the Provisional Specification; would you publish it?—If it was a question on which it was necessary to hear evidence, or to refer to another tribunal, I would then protect the Patentee as at present, by allowing him to deposit a Provisional Specification; I would protect him for a time from the consequences of publicity, during the inquiry, as he is now protected.

1000. Of course, whether there would be opposition or not, would very much depend upon the knowledge which the public would have of the application. If the Provisional Specification were published, it might attract attention, and persons might come in who otherwise would not?—Yes.

1001. Upon what would you make that to depend?—I would have the inquiry as it is at present at first, *ex parte*; but if there was any fact in the minds of the Law Officers or of those who advised them, which made it desirable to hear evidence, I would then hear that evidence, in the meantime protecting the person against the consequences of the matter being made public.

1002. I do not quite follow what you describe as hearing evidence, do you mean inviting evidence?—I will put it in this way. Supposing, for instance, you were, as you have been, a Law Officer of the Crown, and your chemical adviser said, "My impression is that this process has been publicly used in Manchester," you might require to have your mind satisfied as to the extent of its use, or whether it had been used in Manchester. There

might be an impression that it had been used without its having been publicly used. You would require to be informed on that subject. You might do it yourself. You might have the witness before you to prove what had been done in Manchester, or you might have another tribunal if you considered it too difficult a matter to deal with yourself.

1003. It would be unlikely that either the Law Officer or his adviser, as you term him, would have a witness in his own hands to produce upon the subject. I suppose that would rarely be the case, but suppose that the Law Officer or his adviser said, "I have a strong impression, from the look of the thing and the little I know of it, that it cannot be new, but still I do not know how to prove that it is not," could he, in order to enable him to decide, advertise in some way?—I see no objection to his doing so, protecting the party.

1004. But he must advertise the Provisional Specification?—Yes, but he would protect the applicant. I think that it would have this advantage, that it would frequently prevent an extremely protracted and difficult trial at a subsequent time. There are many cases which I have seen where directly the defence is opened after a long trial the matter dies. You never can tell beforehand, because a counsel can never know even from his own brief, whether his witnesses are reliable or not; but I have known cases where as soon as the first witness is examined the case is at an end.

1005. Is it not your experience that there are a great many Patents which, by the experience which has been gained during the short interval, when the Provisional Specification is kept secret and while there is protection, are ripened into such maturity that the Final Specification comes out as the Specification of a perfectly good and valid Patent, where, if there had been litigation upon the Provisional Specification, imperfect and crude as it often is, the Patent would hardly have held water?—I do not think that you should grant a Patent at all unless a man is possessed of his invention when he files his Provisional Specification. I think that the six months allowed for making the Final Specification are simply for the greater perfection in the method of working the invention. I do not think that any portion of the invention itself should be permitted to intervene between the Provisional and the Final Specification.

1006. But is it not constantly the case that by the secrecy and protection of those months and the ability which the inventor has of making experiments in that time, in the case of a machine, for instance, it comes out a much more perfect machine than that which he described in his Provisional Specification, and yet no one would ever object that, in consequence of the improvements which it has received in the meantime, it is a different Patent from the one which has been protected?—I cannot, off-hand, call to mind any striking instance of that. No doubt the details of the manufacture are frequently improved, but the actual practice, as I have seen it (and I have had a great deal to do with such subjects), is that the Patentee leaves it very much to the last moment, and that there is not a great deal of information got between the Provisional and the Final Specification. Practically speaking, the Final Specification comes to be settled at the last moment, and I cannot call to mind, off-hand, any case where there has been any substantial improvement, as to the invention itself, between the two Specifications.

1007. But is not the theory this, namely that the Patentee may, by making experiments, which he would be afraid to make, until he had the protection, lest the matter should become public, and by reflection and experience finish, and perfect, and add to the invention?—The law requires him in his Provisional Specification to state the nature of his invention, and in his Final Specification to state the nature of his invention and the mode of performing it; and the six months are given, not for any purpose of enabling him

to state the nature of his invention, but to enable him the better to state the means of performing it.

1008. But suppose that the invention is a mere means of performance itself?—It must always involve an idea, or it is no invention. For instance, if it is simply the better fabrication of a machine, it is no invention. Mr. Whitworth could not get a Patent for making screws better than any other person.

1009. (*Lord Overstone*.) You mean that the Preliminary Specification must contain in reality the machine, although it may be in a very crude and clumsy form, hardly perhaps formed, but still a machine in principle?—Yes, it must contain what purports to be the invention of the person who has made it. He ought not to have Letters Patent unless he has made an invention, and made his invention at the time of the Provisional Specification, and he is then given six months for enabling him to carry it out, and one of the objects of that and of the Provisional Specification, is, that if in the operation during those six months his invention should be discovered, he may go on if he likes openly making his improvements, and it has been a frequent question with reference to different inventions whether it is better policy for a Patentee after his Provisional Specification to publish his invention or to keep it secret.

1010. (*Sir H. Cairns*.) Sometimes he files a Complete Specification at once?—He may do so by law, but it is not very often done in practice. I have stated that, although the leaning of my opinion is in favour of preliminary examination, still that opinion has been a good deal shaken by what I have heard of its inefficiency in America; but the way in which it impresses me is this, assuming that which I believe to be the case, and in which I entirely agree with Mr. Platt, namely, that the number of frivolous inventions and of old inventions patented is a real practical inconvenience to the manufacturer; that inconvenience should be remedied if it can be remedied. The one method is a preliminary investigation, more stringent than it is at present. There may be two others, though I cannot see my way clearly to one of them. One of these had occurred to my mind before Mr. Scott Russell mentioned it, and I have often discussed it, that is to say, allowing the Patent to go with no more examination than at present for the first three years, but obliging the Patentee after that period to come before, say, either the Law Officers, or a Patent tribunal, or an assistant of the Law Officers, or some competent body or person, and then making it incumbent upon him to show cause why his Patent should be prolonged; something analogous to the present system of the Judicial Committee of the Privy Council, but applied to the Patent at an earlier stage. It strikes me that there is a good deal in what Mr. Scott Russell said upon that subject, it would have not quite the same advantage as a preliminary investigation, if you could get a satisfactory preliminary investigation, because it would let the public be exposed to the Patent for three years and it would lure the Patentee on for three years, and therefore it would not be quite so satisfactory to either party as suitable examination in an early stage, but it would prevent a very considerable amount of complaint, which would be a very serious objection to a preliminary investigation.

1011. I suppose that the preliminary investigation of which you have spoken could only be an investigation into novelty?—Into novelty and also into triviality.

1012. But could not *ex necessitate* be an investigation into the question which very often arises, namely, whether the Invention and the mode of working it has been properly specified?—Just so.

1013. Supposing that you had a mode of taking a rule to show cause why the Patent should not be set aside, which might be obtained at any moment after the Patent was completely specified, so that it might be obtained at the end of six months, would not there be an advantage in that in this respect, that you could upon that rule embrace all

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questions which would arise upon the Patent?—Yes, that was one of the alternatives to which I was alluding.

1014. Would not there be this advantage in that the moment the invention became public, and therefore the moment the public would be galled by it you would have an investigation which would, if it were open, more completely reach every question which could arise upon the Patent?—I have thought a good deal of that, and, undoubtedly, if it could be practically worked, it might be a very beneficial thing, but I cannot see my way to it practically, and for these reasons, an application to repeal a Patent must be at the instance of an opposing party. We will assume a Patent to be granted, and that a twelve-month afterwards some one wishes to repeal it, you might, undoubtedly, to some extent, simplify the present proceeding of *Scire facias* and make the formal matter more inexpensive, but I do not see how you could simplify the contest. If the Patentee himself was a wealthy man and a large manufacturer, having 20, 30, or 40 Patents in his possession, he would struggle to the utmost to maintain his Patent, he would retain the ablest advocates and the ablest scientific witnesses, and there would be no chance of repealing the Patent unless the person opposing it had something like an equality of purse to go into the field. You never could get the battle fought if one side was wealthy, without the opposite party having something like equal powers to oppose him.

1015. Would not that observation apply to the preliminary investigation unless the preliminary investigation was one-sided?—I think not, because I should never expect any tribunal to reject a Patent because it was a doubtful or contestable matter. I should get rid of those things only of which the Patentee had given no fair *primâ facie* of evidence sufficient novelty or importance.

1016. You mean Patents which would go to the wall upon the slightest examination?—Yes; I take it that theoretically, though not practically, at present the onus lies upon the Patentee when he asks for Letters Patent, to satisfy the Crown and advisers of the Crown that he has *primâ facie* ground for asking what he does.

1017. It is impossible to prove a negative; he cannot prove that his invention is new; he cannot import a *primâ facie* case of novelty till he hears what is said against him; but if the preliminary investigation which you suggest were of such a character that you would not expect the tribunal to reject a Patent unless upon a moderate examination it was clearly bad, Patents which were arguable would survive?—Yes.

1018. But in the case of a rule to show cause where you apprehend so much expense from the necessity of calling engineers and scientific witnesses, do you think that great expense would be incurred with regard to Patents which would not bear investigation, do you not think that it would be difficult in those cases to create a great expense in investigation?—You would very likely not have a rule to show cause in those cases; you would have this: a tradesman obtains a great stock of new shaped goods for the season; he has a letter from a Patentee saying, "You are infringing my Patent;" I do not believe that the tradesman would go to the expense of litigation with the Patentee, and for this reason, it is the Patentee's interest to give a very large sum of money to support his Patent; his Patent, although for a very trivial thing, may, taking the vast extent of sale, be a very lucrative affair, and therefore it is worth his while to lay out a large sum of money to support his Patent; it is not worth the while of the opponent, because he has only a little stock which affects him; the Patentee has his whole interest consolidated in the Patent; all those who might oppose the Patent are a scattered body, namely, the public generally, not one of whom has any strong interest in opposing the Patent, and I believe that that has been very much worked by Patentees, particularly in a small and

comparatively frivolous and perhaps an all but useless invention; the public is a scattered body not one of whom has sufficient interest to meet with equal force the Patentee, and that is one of the difficulties which I should like to see my way to remedying.

1019. (*Sir W. Erle.*) Does not your remark mean, that the attack upon the Patent would be in proportion to its importance and its value; that the insignificant Patents would be left to themselves, and that in the case of a valuable Patent a great interest would be brought to bear?—There are two sorts of interest in Patents. A Patent may be an extremely valuable invention; for instance, the manufacture of Aluminium is of the utmost importance, but it was of very little trade value for a long time. When Aluminium was first made what I may call a practical manufacture, it was of no value to any tradesman at all, it would take probably 10 or 20 years before such a thing could have any approach to practical value. On the other hand, the most frivolous Patent—the turn of a lady's hat, the cutting of a shirt frill, or a new boot-heel—may be of very considerable value, from the number of boot makers all over the country who would have to order it, every one of whom would pay an extremely trifling licence duty, and therefore the Patent would be a very good Patent to the Patentee. In my judgment those are not good subjects for Patents, and there the opponents would have no interest equivalent to that of the Patentee to meet him.

1020. (*Mr. Fairbairn.*) If there were a preliminary examination, all applications for Patents which would not stand the preliminary examination would be lost?—The invention would not be lost. Of course the foundation of my opinion is, that those inventions would inevitably come without Letters Patent. I am speaking of classes of inventions which, if they may be called inventions at all, would inevitably follow the usual course of trade and the fair scope which every man should have for modifying or improving his commodity. I would not shut out the public from those things.

1021. (*Lord Overstone.*) But are not those the very class of inventions upon which the principle of Patent stimulus is calculated to act?—I think not. I think that those inventions would inevitably follow in the course of human affairs. I think that the mere question of supply and demand would give us those inventions—that it would not give us the great inventions, but would give us the small ones.

1022. Do you think that the stimulus which is supposed to constitute the real ground for granting a Patent, acts very powerfully upon the remaining class of inventions?—I think not. I may cite in aid of my opinion those things which are not patented—the new fashions of the day. We have lately had certainly the registration of designs, which is a much more modified and a smaller form of Patent, in one sense; but I do not find that there is any want of those fashions being promoted by the particular designers, who are not at all protected.

1023. The object of my question was to draw out your opinion as to the efficiency of Patent privileges in stimulating inventions upon those higher objects which would, according to your view, still remain the subject of Patent regulations?—I believe that the great value of Letters Patent with respect to that class of inventions is this: I take it that the main object of Letters Patent is to encourage invention; if, therefore, you would get the same inventions as we now get without Letters Patent, I would have no Letters Patent at all. I believe that, with respect to the minor class of inventions, you would get them; but I believe that with respect to the major class you would not, and for this reason—that although you might have the same inventive faculty at work, you would have such an amount of trade opposition, that unless the person had some fulcrum to support him and enable him to incur expense, either by himself or by the aid of some other capitalist, the invention would be actually smothered. Supposing there is a noxious trade which devastates the country round it,

it is the interest of all the proprietors of the furnaces belonging to that trade to keep up its noxious character. Strange as it may appear it really is so, and for this reason—that they have, by devastating the neighbourhood around them, obtained a monopoly of place. Supposing a party to invent a means of getting rid of that noxious character, he would have the greatest possible difficulty in getting it fairly tried and into the market, and he might ruin himself in attempting to do so, if he had no Letters Patent. He would have the opposition of powerful bodies, not ostensibly, but we know that interest will prevail in these matters. But if he had a Patent he probably would get somebody, upon the prospect of receiving certain assistance from the Patent, to try it with new plant and new machinery, which none of the old works would do, because they must have fresh machinery; but if the inventor had Letters Patent he would get some person to undertake the matter for him, who would say, “I can establish chemical works in my neighbourhood and I will take it up; if I succeed, I shall have a licence duty from everybody else who sets up this trade;” and to my mind that is the great argument for Letters Patent—it is to enable a party to overcome trade interests. Even if you put noxious trades out of the question, the mere difficulty and the enormous expense of supplying plant and other things for new inventions are very great, independently of the natural sluggishness which all persons get into when they have worked a thing in a certain way; you would very rarely get the invention adopted and get it really forced upon the public. Everything which comes into that class (and I would not curtail it) is, I think, a highly beneficial object of Patent Law.

1024. (*Mr. Forster.*) But you seem to me to go very much further than you have stated; for instance, as regards the invention of the combing machine, your idea that that would have been prevented by an opposition of the trade would hardly apply, because it would be an immediate and very great boon to any one manufacturer who took it up?—Yes.

1025. Would it be your opinion that there would be no advantage in such a Patent as that?—I think that there would be advantage. I would not restrict Patents to such cases as I have given as illustrations. I think that, even in the cases you mention, there is a great deal of undue expense before the invention can be brought to bear. In that case it is extremely likely that if there had been no Letters Patent there would have been a great deal of trade opposition to encounter. I would take Mr. Heilman, who was not concerned in the *Lister v. Leather* case (of which I will not speak as I was counsel in it,) but who had made great strides in the invention; he would have encountered great opposition.

1026. Still an immediate boon would have been very large to any manufacturer who had taken it?—Yes, if he would take it; the invention of Mr. Heilman was a very meritorious invention, and one thoroughly deserving of Letters Patent, in my opinion, in every way.

1027. (*Vice-Chancellor Wood.*) Do you agree with Mr. Platt upon the desirableness of excluding Patents for improvements in mechanical inventions?—No, because I think that the greater number of Patents are for improvements; it is a question of degree.

1028. (*Chairman.*) Is not the question of the importance of a Patent also entirely a question of degree?—It is entirely a question of degree, but you may come to a degree so much below the scale that a Patent may, I think, be reasonably rejected; at present it is not so. As a simile, the lights in the spectrum may be said to be questions of degree, they all, as commonly seen, blend into each other; but supposing the green tint to represent the medium, you might reject the violet without any hesitation, but where one is verging upon the other you would hesitate.

1029. Looking at the practical difficulty of the question, although none of us would have any difficulty in pointing to certain inventions which would

be entitled to a Patent, and to other inventions which were so trivial that they would not be entitled to a Patent, if any exclusion on the ground of triviality were allowed, still would not the great bulk of the whole, say perhaps seven-eighths of the whole, lie so far between those two extremes as to create an immense practical difficulty in deciding upon them?—I do not think so; I think that there would be an intermediate line where it would be very difficult to decide; but I think that a very large number of inventions would be so clearly below the line that they might be safely rejected. But I am not at all suggesting a new matter; it is the present law and practice of this country, and we have heard in evidence, in answer to questions by the Attorney-General, that the Law Officers of the Crown not only look to the Provisional Specification, to see whether, *ex facie*, it discloses an invention, but that they do occasionally look to the question of novelty. I am only for extending that principle to a certain degree; that degree, of course, must be a question of judgment and discretion; but I think it better that the judgment and discretion should be exercised in the first instance, than that one should be inundated with a great number of things for which no person fairly conversant with the subject would say that a Patent should be granted.

1030. (*Sir H. Cairns.*) You do not think that at present the Law Officer says, “This is an invention, but it is a trivial invention, and therefore I will not grant a Patent for it”?—No; he never rejects it, as far as I am aware, on account of its triviality.

1031. (*Sir W. Erle.*) Have you tried the method of induction, that is to say, taking the last 200 Patents which have been granted, in order to see how many could be rejected as trivial, *ex facie*?—No; I have not had time since I was invited to give evidence to look at any statistics upon the subject. I am only speaking from being in the habit of seeing these Patents, and occasionally reading the repertory of Patent inventions and those things. Of course many of them may be mere matters of advertisement, and there may be falsehood. One sees a number of things which are inscribed “Patent” so-and-so; a great many of them are not Patents, but a great many of them are.

1032. (*Mr. Fairbairn.*) Might not some danger arise from a very close and rigid preliminary investigation, namely, that you might throw out a number of Patents which might be valuable and useful to the public?—I do not think that there would be much of that; such a thing might occasionally occur, but in all these cases we must look to a balance of evils. In my view you would not reject a problematical discovery, but even assuming the discovery to be successful, you would ask what result does it produce? The result is commonly obvious at the time, and if that result is of a trivial nature I would reject the application.

1033. (*Sir H. Cairns.*) But according to your view you secure the public thoroughly because you take possession of the Specification, and I do not suppose that you mean that it should be destroyed if it were rejected; you take possession of the Specification at once, and the public have the benefit of it if you refuse a Patent for it?—You do not necessarily publish the Specification, you may return it to the inventor and let him keep it private.

1034. I am speaking of your more extended investigation?—We have at present, I think I may say, an admitted difficulty; the question is, what are the means of getting rid of it? I am far from saying that the means do not in themselves present difficulties, the question is whether the balance of difficulties is not more one way or the other.

1035. (*Lord Overstone.*) Do you think that you could set forth clearly, in words, the instruction which you would give to the Law Officers of the Crown, with a view of establishing a more stringent investigation?—I do not know that I could do so more than I have expressed; it must depend upon their judgment. If

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upon the Law Officers referring the matter to Mr. Woodcroft, he brought him a Patent for the same thing, showing it to be old, and if, moreover, it was of a trivial nature, the Law Officer should reject it.

1036. (*Sir H. Cairns.*) With regard to the first of those two points, I suppose it is a question of fact which can be decided; but with regard to the second, would it not vary very much with the opinion of the Law Officers for the time being?—To some extent; but the question is, what right are you taking away by it? I quite grant that after the working of the present system you might have great complaint, and it may be that the mere question of the popular outcry which the change would produce is a sufficiently formidable objection to it; but assuming for a moment that that is not so, then the question is this, if I were taking away the right of any British subject, I should most decidedly be strongly opposed to it, but I am not doing so; he comes to ask me a favour, I am not bound to grant him that favour.

1037. The Government of the country announces that it will grant protection to all authors of new inventions, then there comes a man who hands in what must be admitted to be an invention, and you say, "That is an invention, no doubt, but it is a trivial one?"—Is not that rather an error of practice than the state of the law? What the law says is, that the Crown shall have the right of granting Letters Patent to the first and true inventor of any manner of new manufacture; it does not say that the Crown *shall* grant them.

1038. In olden times it was as a matter of course a favour in the Crown, and to a certain extent it is so now; but do you think that constitutionally the Crown could set up the right of granting to A and not to B?—I think so.

1039. (*Mr. Hindmarch.*) Was it not laid down by Lord Eldon and several older authorities that every Patent is to be construed as a bargain between the public on the one hand and the inventor on the other?—Just so; but then parties are not bound to contract—the essence of a bargain involves volition on both sides. What I propose seems to me to be a thing which could be worked; the greatest danger which I see in it is overcoming the strong feeling against it. From the practice of granting Letters Patent for everything the public have the conception that it is a man's right.

1040. (*Lord Overstone.*) The difficulty presses upon me of your setting forth your distinction in words. You have illustrated your meaning first by pointing out the discovery of aluminium, and saying that it is a discovery of such importance and value that it ought to have a Patent. You have quoted some other cases such as an improvement in the heels of boots, and the new cutting of a shirt, which are what you call of a trivial character, and which ought to have no Patent privileges given to them; but could you set forth in words that distinction in such a form that it could be taken and acted upon as Law?—I could not, because it is one of those things which admit of no form of words, like half the things which are acted upon in law. We have no form of words in the trying of Patents at present—novelty and infringement and invention are all questions of fine degree, which must be decided; the knot must be cut by the jury in the best way it can; and if you have a tribunal without a jury the knot must be cut by that tribunal. No form of words can tell you what invention is; whether there is invention in a thing or not, it cannot be reduced to a form of words.

1041. Assuming that this Commission adopted your view, and wished to carry it out, in what way could they give expression to it?—Simply that the Law Officers of the Crown should exercise their discretion in granting Letters Patent. I do not know any other form of words.

1042. (*Mr. Attorney-General.*) Might you not refer to what you could certainly use words to describe, namely, trivial inventions; might you not say that in the exercise of the functions of the Law Officers they

should withhold their approbation of the progress of Letters Patent, applicable to such inventions as in their judgment should be trivial?—I think that you might go as far as that, and you might add, such as should be clearly old.

1043. (*Sir H. Cairns.*) Would you assume that an invention might be new, and might be useful, and yet might be trivial?—Yes. I would give one of the illustrations that I gave before, I would take the matter of an existing Patent. A certain cloth was sold, such as you see in the bodices of ladies' dresses, with stripes down and a sort of frill between, and a Patent was taken out for simply taking this identical cloth, cutting it into two halves, and hemming it into two frills. We should think it a very great hardship if the seamstresses employed at our houses were not to be allowed to make two gentlemen's shirt frills out of that piece of cloth; and yet I know no reason why it should not be a good Patent.

1044. (*Lord Overstone.*) There is no doubt that you may take a case of triviality of the most indisputable character, and you may introduce cases from that up to cases of unquestionable merit and deserving the Patent right in the opinion of yourself, or even of one entertaining still more stringent views than you do; but the difficulty which I feel is where the Law Officers of the Crown are to draw their line; how are they to be guided in the exercise of their judgment as to the triviality?—Only by their own discretion. I know of no other mode—just as at present a jury are guided by their own discretion as to the questions of invention, novelty, and infringement, and all those points which are usually submitted to them. There is no form of words by which those things can be reduced to an absolute line; it is one of those mixed matters where you cannot determine the line of demarcation.

1045. (*Mr. Attorney-General.*) You have mentioned various questions which are at present decided by juries, such as novelty and utility?—Yes; there are perhaps three main questions which now come generally to be decided by juries, namely, novelty, invention (that is to say whether the article is a mere application, or whether there is invention in it), and infringement.

1046. These other matters to which you have referred are all either entirely or in great part capable of being established by evidence as matters of fact, but have you considered, or has it occurred to your mind whether the question of triviality is or is not a question with reference to which evidence might be brought usefully to bear?—Frequently it might, I think; frequently it would not be required. To take some of the extreme cases which I have cited I should hardly think that any evidence need be adduced in such cases as these, but there might be cases where evidence might be usefully brought to bear.

1047. There might be cases in your judgment, the question being triviality or not, in which the evidence of persons conversant with the range of manufacture to which the particular matter referred might be brought to bear?—Yes.

1048. In your opinion how would the judgment of a witness, who should express his opinion that a particular invention was trivial, be guided?—He would state the consequences which, in his judgment, would be likely to result from it. He would say, "This invention would produce an important change in such and such a trade, and I will show you what change;" or he would say, "It is quite impossible that this invention can produce any substantial change, because of the multiplicity of things which are so very nearly the same." The question is what the inventions come to. I have a strong impression upon the point, it is what in another stage we really come to in all these trials, and I see no reason why, in certain classes of things, the matter might not be decided at first as well as at last. All the questions to be decided are questions of degree, and questions which can only be decided by cutting the knot and

saying, "In our judgment this is on one side of the line and that is on the other."

1049. In your judgment should the question of triviality apply to both the measure of utility and the measure of invention?—Yes, I would leave it perfectly free.

1050. So that if you had novelty with some utility, but the minimum of novelty and the minimum of utility, it would be very much the same thing as you consider triviality?—Yes.

1051. (*Mr. Fairbairn.*) It appears to me, according to your statement, that the whole of the investigation would resolve itself into the judgment of the party investigating?—It would.

1052. (*Lord Overstone.*) You think that the question of triviality, as regards the granting or the withholding of Patent Rights hanging upon the decision, may be safely left to the Law Officers of the Crown?—I think quite so, subject at all events to an appeal.

1053. And you think that it would work satisfactorily to the public?—I think that it would, if you could once get over the difficulty which there would be in passing to a new system. I see strongly and very fully the danger of that. We have so worked upon the present system, which I do not take to be the pure law of England, of allowing everybody to claim *quasi* as of right Letters Patent, that I think there would be a great outcry if a stricter system was to be introduced, and the only way in which such a system could be worked judiciously would be, I think, by cautiously working it, and only cutting off in the first instance those inventions which were extravagantly trivial. But by degrees that might be extended, and both inventors and the public would be benefited by it, the public by not being trammelled by a number of small inventions, and the inventors by not being led after an ignis fatuus in a great many instances.

1054. (*Mr. Fairbairn.*) You think that the Law Officer, the Attorney-General, should have some assistant, in order to conduct a preliminary investigation, and search more closely into the nature of the invention, and to see whether a Patent should be granted for it or not?—I think he should. I think that he could hardly do it without; he could hardly substantially extend the present investigation without assistance beyond that assistance which he now has. He has a right by the present statute to call in assistance, but he would require more permanent assistance.

1055. He would have a permanent officer?—Yes; I should think two at least; one in the department of Chemistry, and another in the Department of Mechanics.

1056. (*Chairman.*) In the event of the principle of preliminary inquiry not being approved by the Commission, do other alternatives suggest themselves?—There are two other modes which have been suggested, the one is obliging the Patentee at expiration of three or seven years to make out a case for the continuation of his Patent, very much although in a more summary way as is at present done, before the Judicial Committee of the Privy Council in prolonging a Patent. At present the party has to make out a case, and in a very great number of cases, and I may say the majority of cases, before the Judicial Committee of the Privy Council it is an *ex parte* case; it is not opposed, and yet the greater number of those applications are refused. The Patentee comes to show the Judicial Committee of the Privy Council why his Patent should be prolonged. Now if there were no preliminary examination, it seems to me that it would be a desirable thing, either at three or at seven years, that the Patentee should come before either the Law Officers or a tribunal, supposing there was one appointed, to show cause why his Patent is deserving of prolongation. I think that, in addition to those Patents which drop naturally, it would possibly cut off many Patents. The trade having had large experience of the Patent, opponents could come and be heard as to the question affecting it, and the matter might be

decided, as it seems to me, at less expense than by a trial; because the present bearing before the Judicial Committee of the Privy Council is *cateris paribus* a much less expensive form of inquiry than an absolute trial of Letters Patent.

1057. (*Mr. Fairbairn.*) According to the existing law does the Patent date from the last payment at the end of seven years?—No, it dates from the filing of the provisional Specification.

1058. Then half of the period of the Patent has expired by the time of the last payment?—Yes.

1059. There appears to me to be some difficulty there where a man may have a Patent and may be experimenting upon it for the first three years, and probably may experiment upon it for the next four, before he gets it perfect, and then he has only seven years afterwards?—He cannot alter his Patent by the present law, the Patent must be complete at the filing of the final Specification, after that he must abide by it for good or evil; he may give the public gratuitously the benefit of any amendment, but he cannot alter his Patent. If he wishes to get anything additional to it he must take out fresh Letters Patent. The other alternative to which I was going to allude is the question of a more summary repealing of Patents. I think that something might be done in that respect. I think that the present trial by *scire facias* is undoubtedly a very cumbrous and expensive proceeding, but I do not think that you could avoid great expense in a repealing system, though you might considerably lessen the expense, and certainly failing other things I should much prefer its being done to nothing being done. There is a very great difficulty which occurs in actions of *scire facias*, and that is a question which may seem at first sight to be of little importance, but practically it is of very great importance, namely, having the first and last word. Previously to 1852 the person who wished to repeal a Patent, in fact, though it was nominally the Crown, had to begin, that is to say, he had to open his case against the Patent, the Patentee then answered it, and then the promoter of the *scire facias* seeking to repeal the Patent had the last word, and, previously to 1852, very few, if any, Patents ever escaped the effect of a *scire facias*. If people could find the funds and means to go into Court well prepared to support an action of *scire facias* it was generally, if not universally, successful. I believe that there were only one or two exceptions. That mode of proceeding was altered by the Patent Law of 1852, and the onus was thrown the other way. The Patentee had the right to begin and he had the right to reply, and since that period, I believe, just the reverse thing has taken place, very few Patents having been repealed, and, generally speaking, the Patentee has been victorious.

1060. (*Vice-Chancellor Wood.*) It depends a good deal upon whether you have a jury or not?—It undoubtedly does; but there is this, and I do not say that it should not be so, the Patentee has a better chance in *scire facias* now than he has in an action, because he is supposed to be attacked by the Crown, and therefore the sympathies are with the Patentee, and the common argument is, after all, if you do not repeal the Patent it will do no harm. If the Patent is a bad one the Patentee will not be able to recover in any action for the infringement of it; that argument is generally found to be successful, it is said, we will not finally cut him off from all remedy.

1061. (*Mr. Attorney-General.*) You have alluded to the inconvenience and the costliness of the proceeding by *scire facias*, is there any inconvenience now in the proceeding by *scire facias*?—I presume that there is, because I believe that it is very seldom adopted. The proceeding is a costly one; at least, security for costs must be given, if I recollect rightly, by the person applying for the *scire facias*.

1062. And he must satisfy the Attorney-General that he has at least a *prima facie* case?—Yes.

1063. But there is no great expense in that?—He is obliged to be a person who can give security for

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costs, and I believe that the amount of security is generally heavy.

1064. 1,000*l.*?—Yes.

1065. But the real cost of all these investigations, whether in an action or under the form of a writ of *scire facias*, I think I am right in saying, is the trial?—Undoubtedly.

1066. The presenting the case in Court, and obtaining the witnesses?—Yes; and there the practical point is, that it is the Patentee's interest, and it is worth his while to lay out a very large sum of money, and it is seldom worth the while of a person opposing the patent to do so; he has not the same undivided and individual interest in the matter.

1067. Would you make the power to challenge a Patent as it is now challenged, under the form of *scire facias*, a matter of right on the part of any person coming forward, or would you retain the discretion of the Attorney-General as to whether the case ought to go forward or not?—I have not much considered that question. I do not see very great harm in letting any member of the public attack a Patent if he likes, but my mind has not been much devoted to a consideration of the value of the law officers exercising a discretion upon that matter, and therefore I am not quite prepared to answer that question.

1068. (*Chairman.*) Have you at all considered the question, whether any change is desirable in the tribunal appointed to try Patent cases when contested?—I think that now it has almost become a matter of necessity. I had at one time great doubts about it, but things have arrived at a dead lock. The Courts now really cannot try these cases. We have at these very sittings three Patent cases made remanets because they cannot be tried; they interfere too much with other business. We have at this moment going on a Patent trial which is now in its fourth day. We have had within I think a week another trial of a Patent, which lasted seven, and a third which lasted five days. During the time that these Patent cases have been going on there have been heavy Patent arbitrations going on, two of which I can speak to myself; one, I think, lasted 17 days, and the other, which involved a very simple issue, lasted six or seven days; those arbitrations went on contemporaneously, and the cases were obliged to be tried by arbitration because the Courts could not try them, it would have occupied too much public time. While these cases have been going on several Patent cases have been also ready for argument in banco, and one has been postponed in consequence of the counsel on both sides retained to argue it being engaged in another Patent case. Yesterday, for instance, there were in the paper three Patent cases, one for trial and two for argument; and speaking with reference only to the last fortnight or three weeks, if every judge at Westminster who was sitting at *Nisi Prius* had been employed in trying the Patent cases alone, the time would not have sufficed for it, to say nothing of work at Judges' Chambers in settling particulars of breaches, notices of objections, &c.

1069. (*Lord Overstone.*) Do you say that trial by arbitration occupies as much time as trial before the court?—Decidedly a longer time.

1070. Then do you think that there is any possibility of constructing a tribunal which shall obviate that?—Decidedly, for this reason, the evils of an arbitration are these: the arbitrator has not the power and authority of a judge, he is generally a counsel much occupied with other business; he is therefore obliged necessarily to postpone the arbitration to his court business; it is the practical rule I may say, that arbitrations are not to interfere with court business, or court business could not go on. Whenever, therefore, either the arbitrator or any of the counsel engaged have business in the courts (and they never can tell the moment when it may arise) they break off from the arbitration and the arbitration is adjourned, it may be for two or three hours, or it may

be for weeks, depending upon circumstances. The consequence is that the arbitration depends upon the occupations of the arbitrator and the counsel engaged on each side. Frequently in Patent cases now there are two counsel on each side besides the arbitrator.

1071. When you say that an arbitration occupies as much time as a trial in court you do not mean that it occupies an equal number of hours?—It occupies more, for another reason; it occupies time in spreading over time for the reason which I have stated; but there is another very important matter in arbitrations, and which is not confined to Patent cases. If, for instance, a witness whom A. has called has given important and damaging evidence against B, the antagonist, the case is not concluded; it does not go on as in court, and exhaust the materials there, but next week when the parties again meet, in all probability a fresh witness will be ready to answer the difficulties which have occurred with the previous witness. These adjournments are of a most fatal nature, because between each of them you have a reconsideration of the whole case by the parties interested each in opposing the other as strongly as they can, and the consequence is that without the authority which is generally exercised by a good arbitrator the case is almost interminable.

1072. Supposing that an arbitrator sat continuously as the court does, do you think that an arbitration would be shorter than a trial in court?—If the arbitrator sat continuously in public, and had the same legal and moral power, it would be very much the same thing as the court.

1073. Do you think that it would be the same thing, to the extent of being as protracted?—I think that it would be shorter, for this reason, if you assume that particular classes of cases, such as Patent cases, are referred to a special tribunal, a great many of the ordinary manœuvres would be drifted off; it would be found that it was of no use trying those things before the tribunal, which can always be tried, and are tried *ad nauseam*, with a fresh jury, because it is not as if the same jury tried Patent cases. Those manœuvres would never be attempted before the new tribunal.

1074. (*Mr. Forster.*) I suppose that the adjournments which you speak of in arbitrations are generally such that the witnesses are still obliged to remain?—If they are adjournments for a short time the witnesses remain.

1075. Then I suppose I am to understand from what you state that a trial by arbitration is upon the whole more expensive than a trial by the court?—Very decidedly so.

1076. (*Mr. Fairbairn.*) That is a very strong argument in favour of a separate and distinct tribunal for trying Patent cases?—Whatever my opinion might have been, my impression is now that it is an absolute necessity.

1077. (*Vice-Chancellor Wood.*) What is your impression as to the assistance of a jury or not?—I have always had a very strong feeling in favour of trial by jury, but I think that it hardly suits Patent cases, upon the whole. The advantages of a jury are very great; it prevents the fixity of character of mind which exists in a single judge, or in a judicial tribunal; however anxious to do right they probably will have certain views of their own; in other words it is one person or one tribunal. The great advantage of a jury, to my mind, is that it is a constantly fluctuating tribunal, consisting of a number of men each of whom is devoting his individual mind to the particular question. The scheme has been proposed of having a smaller jury of selected men, say a jury of five selected from a panel of skilled men; that was a scheme which was suggested by a committee of the British Association and Social Science Society.

1078. Would it be easy to find skilled men wholly free from bias in Patent cases?—It would be extremely difficult.

1079. (*Mr. Forster.*) If power to challenge were given to each side, would not that difficulty be re-

moved to a great extent?—The question is, whether you can have a sufficiently large panel for that. If you can, that is a valuable suggestion. If you could have 30 or 40 skilled men reduced by challenge to five, and could let them decide the fact, charged by the Judge, I am far from saying that it would not be an efficient tribunal.

1080. Do you suppose that such a body as that, selected out of a panel by challenging, would, or would not, be better than a jury of permanent assessors?—I have some difficulty in answering a question which must depend so much upon the working. I think that I should prefer a jury selected in that way to permanent assessors.

1081. Would there be a difficulty in obtaining permanent assessors who would have the amount of knowledge of inventions which would give confidence?—I think that there would be a good deal of difficulty, and for this reason: the gentlemen who would make valuable permanent assessors, engineers or chemists in great practice, would require to be very highly paid, in fact to have practically judicial salaries; you must give them sufficient salaries to enable them to give up their profession, and moreover you must select that tribunal from men who have been a great deal experienced in Patents. You would not take some of our eminent scientific men who have not been concerned in these matters as assessors, because, however great may be their knowledge of science, you require special knowledge for the practical working of these things. You would, therefore, require to have a fixed tribunal, and then you get men who from their daily habits have of course been a great deal mixed up with persons who come before the court as litigants. I do not, however, think that that would affect them if they were removed from that sphere and made permanent assessors.

1082. (*Vice-Chancellor Wood.*) Would you, in any tribunal, give the Judge, as distinguished from the parties, the option of calling in the aid of a jury?—I should be inclined to do so; I would not give that option to the parties.

1083. Are there not occasionally simple matters of fact, on the question of novelty, for instance, not materially connected with scientific evidence, but merely as to actual user?—There are a great number of matters of fact which the judge could dispose of with great satisfaction, but there are questions on which, for public purposes, it might be desirable to have a jury, but I would not make it at the option of the parties.

1084. (*Chairman.*) Do you think it better that a Court such as you suggest should be altogether separate and special, or that Judges should sit there taken from any of the other courts?—My impression is that it would be better to make it separate and special. There are objections, undoubtedly, to a special tribunal, but I think that it would be attended with the greatest possible inconvenience, and that many of the advantages would be entirely lost, if you had a judge from the other courts. You would not, for instance, have the shortening of the proceedings to which I have adverted. You would not have the special knowledge which is now becoming almost an essential in these cases. It is a peculiar class of business, separate almost entirely from other business.

1085. (*Mr. Attorney-General.*) Would you refer purely legal questions arising in the course of the litigation to this tribunal?—I see no reason why it should not be so.

1086. In the first instance?—In the first instance. The assessors, if there were assessors, would of course have nothing to do with the legal question.

1087. Probably you would make the appeal from that tribunal in the same stages as the appeal is now from the ordinary Courts, namely, to the Exchequer Chamber and the House of Lords?—That might be done, or it might be a matter of serious consideration whether it would not be better to give the appeal to the Judicial Committee of the Privy Council.

1088. Upon legal questions?—Upon legal questions,

because the Exchequer Chamber is at present very much occupied.

1089. If you sent the parties to the Privy Council they could not go to the House of Lords?—You might give them an appeal to the House of Lords besides, but I think that at present there is a little too much appellate jurisdiction.

1090. But at present that is the Court of final appeal?—Yes. There is one other suggestion which might be made upon the question of tribunal, which is neither to have a jury nor to have permanent assessors, but to have a person selected by each party for each particular case to sit with the Judge, and with whom he might discuss the matter afterwards. There is a good deal to be said in recommendation of that.

1091. (*Vice-Chancellor Wood.*) You mean persons chosen for the moment?—Chosen for the moment, and chosen to represent the parties; and a Judge would be a very inefficient man if, having heard the whole evidence, he retired with an engineer or chemist representing A., one party, on the one hand, and another representing B. on the other, and discussed the matter with them, and could not come to a right conclusion.

1092. (*Chairman.*) That in fact is only allowing each party to choose his assessor?—Yes; those assessors would not be sworn witnesses, but they would assist the Judge afterwards upon any question of difficulty which might present itself.

1093. (*Mr. Forster.*) You would not allow those assessors to be paid by the opposing parties?—No; I would provide for the expense of those assessors if it were made a permanent system.

1094. (*Vice-Chancellor Wood.*) Or there might be the power which the Court of Chancery now possesses of the Court calling in its own assessors, might there not?—Yes, or there might be both. The Court having heard these parties on each side might say, "I will call in a third person and let him assist me."

It having been proposed that my examination should be resumed on a future occasion, I think it better, as I have nearly gone through the questions, not to encroach on the time of the Commissioners for another meeting, but with their permission to add a postscript to my evidence.

Before quitting the subject of tribunal I would observe that, as some persons think there would not be sufficient business to occupy such tribunal (though I do not myself think so, if jurisdiction in equity and prolongation be included), the judges might have power to refer other actions involving scientific questions to such tribunal. There are, for instance, many cases besides Patent actions to properly understand which requires considerable scientific acquirement; actions or indictments for nuisance, now frequently referred to an arbitrator either to award finally upon the issue, or to direct what should be done to remedy the nuisance and yet, if possible, to preserve the trade. Actions upon engineering contracts, or contracts for sale of chemical products and many others, depend frequently upon questions of physical science, and for such cases the tribunal suggested would be more appropriate than the ordinary ones.

As to Question 8, I see no practical mode of assessing royalties; the value of an invention and the profits it ought to produce depend upon so many indeterminate circumstances and vary so frequently from changes in trade, other inventions, &c., that a licence duty could hardly be fixed for months without great risk of injustice. Warranties would be required by the licensee, and a fruitful source of litigation might be opened up. The nearest approach to a practicable plan which I have heard of is that of Mr. Scott Russell, viz., that a maximum royalty should be fixed on granting or renewing the Patent, but even this is open to many difficulties.

9 and 10. I do not think Letters Patent should be

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granted to a mere importer, it may be a fraud upon the inventor himself, and in the present state of international communication the cases are extremely rare where there is any merit in merely communicating a foreign invention of which the journals of the next week would probably contain an account. In the greater number of cases the Patentee is a trustee for the foreign inventor, and it would be better to grant Patent to the inventor himself, as the fact of his being the true and first inventor could be more fairly ascertained in the case of litigation, by his examination orally or by commission.

It would seem, at first sight, more for the interest of this country to grant no Patents to foreigners, as

Adjourned to to-morrow at half-past 4 o'clock.

we should thus get without restriction the greater number, if not all, foreign inventions; but were this so, other countries would legislate in the same direction, and we should have inventions patented in this country and the public more or less restricted, while they could be practised freely abroad;—thus giving foreign countries the benefit of our improvements without restriction, and also leading to secret or open importations of products patented here. Upon the whole, it seems to me better to grant Letters Patent to foreigners.

I have no suggestions to make as to the other questions.

W. R. GROVE.

Wednesday, 11th February 1863.

PRESENT :

The Right Hon. LORD STANLEY, M.P.
The Right Hon. LORD OVERSTONE.
VICE-CHANCELLOR SIR W. PAGE WOOD.
SIR HUGH CAIRNS, Q.C., M.P.

W. R. GROVE, ESQ., Q.C.
W. M. HINDMARCH, ESQ., Q.C.
W. E. FORSTER, ESQ., M.P.
WILLIAM FAIRBAIRN, ESQ.

THE RIGHT HON. LORD STANLEY IN THE CHAIR.

SIR WILLIAM ARMSTRONG examined.

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1095. (*Chairman.*) You have considered the subject of the Patent Law for a considerable time?—I have.

1096. I think I am not mistaken in saying that you have on various occasions expressed opinions generally hostile to the maintenance of Patents?—I have.

1097. Speaking theoretically, you would prefer the complete abolition of all Patents, leaving the use of inventions absolutely free?—That is my private opinion, but it is an opinion which I should not like to press at the present time, because, in the first place, I feel that I am quite in a minority upon that point, and I also doubt whether the public mind is ripe for so extensive a change.

1098. (*Mr. Fairbairn.*) Have you turned your attention to any modification which may be made in the existing Law, assuming a Patent Law to be continued?—I think that the most flagrant feature of the Patent Law is the indiscriminate grant of Patents to all applicants.

1099. (*Chairman.*) In your opinion ought there to be a preliminary inquiry of a more searching character than the present?—I think so; in fact, I consider that the present preliminary inquiry is a nullity.

1100. At present it is understood that the preliminary investigation is only slight and almost formal?—Yes.

1101. And that the result of it is simply to grant to the person who calls himself an inventor a right to sue?—Exactly so.

1102. You think that some means should be taken of ascertaining the novelty and the usefulness of an invention before it is patented?—Yes. I think that the granting of Patents ought at all events to be very much narrowed.

1103. Can you give the Commission any instances from your experience of inconvenience produced by the lax system of granting Patents at present?—I have experienced a great many cases, but I should rather object to specify cases, because doing so has already exposed me to a great deal of personal obloquy and vituperation; I would rather speak to principles than adduce particular instances.

1104. Then I will only put the question to you in a general form. Is it within your knowledge that considerable inconvenience does exist in those branches of business with which you are most conversant from the multiplicity of Patents?—Most certainly, and great obstruction.

1105. Can you state in what manner the inconvenience to which you refer arises?—One manner is this, that under the present Law a Patentee who is really not the sole or the first inventor is allowed to

take possession of an idea which is present to the minds of very many persons at the same time. Without any reference to his competency to develop that idea, and to give it practical value, he is allowed to have a monopoly of it, and thereby to exclude all other persons.

1106. Would you put it in this way, that the same idea may occur almost simultaneously to 20 persons engaged in the same business, and that one of them who has a few days or it may be a few hours' priority of the rest has the power of excluding all the rest from the use of that which they themselves have independently discovered?—Priority in application, to the Patent Office does not imply priority in invention. You have no means of ascertaining whether the person obtaining the Patent is really the first inventor, and in a great many cases I believe that he is not; in fact, the inventions, if I may so describe them (though I almost doubt the reality of any such thing as pure invention at the present day, everything is mere adaptation), are inventions for the most part called forth by the requirements of the moment. As soon as a demand arises for any machine or implement, or process, the means of satisfying that demand present themselves to very many persons at the same time, and it is very unfair and very impolitic I think that the person who gets first in the race to the Patent Office should have the means of preventing all others from competing with him in the development of that particular means or process.

1107. (*Lord Overstone.*) To apply that practically you say that invention is at the present day almost exclusively adaptation; take the question of the distribution of sewage, there is a great desire now to obtain a more efficient and a more economical means of distributing the sewage of towns over agricultural land, do you think that on the supposition that some person proposed a machine or a plan for accomplishing that object easily, speedily, and economically, he ought to be precluded from some beneficial result to himself from that, merely on the ground that it was adaptation and not invention?—The first question which I would ask is this, are we to consider the question of Patents with reference to the interests of the public or with reference to the interests of the inventor. I think that we must consider it either upon one footing or the other, either as a public question or as a question for the benefit of the inventor.

1108. Taking it upon the ground of the interest of the public, the public now feel that their interest would be greatly promoted by such a contrivance as

I have suggested; if such a contrivance should be suggested by any individual, would he not render a great service to the public, and is it not possible by some means or other to hold out to persons a temptation and encouragement to produce such a contrivance?—I do not think that because it is a mere adaptation the claims of the adaptor are less than if he was really an inventor, but I think that in all cases the reward, or monopoly, or protection, or whatever it may be, should be measured by the value of the service rendered and the amount of labour expended. Very many inventions, in fact the great majority of inventions, are the result of mere accident—if you let them alone they will turn up of themselves. There is no reason to adopt a system of monopoly for the purpose of eliciting them; they turn up simply in the ordinary and natural course of things, but if you can show that in any particular case the public is clearly indebted to the labour and intelligence of an individual for an improvement, whether it is an adaptation or an invention, or whether it is a novelty or not, I should be very glad to see some rational system of reward under which he could be benefited, although in the great majority of cases success in such matters would bring its own reward.

1109. You look upon a Patent right then only as a reward under consideration of justice to the supposed inventor, and not as a means of stimulating invention?—I think that there is very little necessity to stimulate invention.

1110. (*Mr. Fairbairn.*) How would you give these rewards in the absence of a Patent Law?—I am not prepared to say that. If the country would expend in direct rewards a tithe of what is paid for Patent licences and Patent expenses, there would be ample provision for the purpose. As a matter of opinion, I believe that if you let the whole thing alone, the position which a man attains, the introduction and the prestige, and the natural advantages which result from a successful invention and from the reputation which he gains as a clever and able man, will almost always bring with them a sufficient reward; that is my opinion. I know that it is not the general opinion, and therefore I do not wish to press it. We will assume for the present that some system of Patent right has to be maintained; the question is, how you can modify that so as to diminish its inconveniences?

1111. You think that if a person brings forward a discovery useful to the public, he should be rewarded in some manner?—I think that his reward will come naturally.

1112. That brings us back to some law under which some means might be adopted for rewarding the person who brings out a useful invention?—Yes, if we are to have artificial rewards.

1113. (*Mr. Forster.*) But I rather understood you to suppose that in the absence of any Patent Law, the law of supply and demand would give such a reward for his services that he would be rewarded without a Patent Law if it was a really useful invention?—Yes, wherever a man really shows aptitude for invention and general cleverness in these things he naturally gets on in the world, and he has generally quite sufficient reward. The mere conception of primary ideas in invention is not a matter involving much labour, and it is not a thing, as a rule, I think, demanding a large reward; it is rather the subsequent labour which the man bestows in perfecting the invention, a thing which the Patent Laws at present scarcely recognize.

1114. (*Lord Overstone.*) Have there not been discoveries which have been practically useful during the lifetime of the discoverer, and which have been lost to the public from the want of sufficient publication afterwards?—I have no reason to say so.

1115. You know of no such cases?—No.

1116. (*Mr. Fairbairn.*) The difficulty which would present itself to my mind under such a condition of things as you propound would be this: that a *bonâ*

fide inventor if he was a poor man would have very great difficulty in the matter; another man might come and take up his invention and deprive him entirely of the benefit of it unless he had some law to protect him, although he very likely had spent a great part of his life and all his property upon the discovery?—I cannot agree with you that that would practically be the case. The fact is that a primary idea, a mere scheme, is not in itself of much value until it has gone through the experimental stage and has been brought to a practical condition. I have every week letters from inventors, and I daresay you have the same; I have scores of them. Poor men very often come to me imagining that they have made some great discovery. It is generally all moonshine, or if it looks feasible it is impossible to pronounce upon its value until it has passed through that stage of preliminary investigation which involves all the labour and all the difficulty and all the trouble. Many a poor man is ruined by fancying he has made a discovery which, by means of a Patent, will bring him a fortune. He loses all relish for his usual pursuits, and sacrifices his earnings to a phantom.

1117. I am merely supposing the case that a man has really made a discovery, not one of these frivolous and useless inventions or mere ideas, but that he has brought out a real idea, and developed it to any extent, unless he has some protection of the law may not he be deprived of it by other parties who are interested in carrying on that particular discovery?—I think that absolute discoveries are very rare things; nearly all inventions are the result of one improvement built up upon a preceding one. A poor man who has the ability to make really practical improvements is almost sure to rise in the world without the aid of Patents.

1118. (*Vice-Chancellor Wood.*) Have you thought of what course of preliminary inquiry you would recommend?—I think that anything which would have the effect of choking off a great number of these Patentees would be a very great improvement.

1119. Whether by scientific men or by legal means, or by a combination?—By a combination.

1120. (*Chairman.*) So far as the question of the novelty of an invention is concerned, a preliminary inquiry might present little difficulty; but we are anxious to know whether you can suggest any rule which could be laid down by which such a tribunal as is proposed to conduct the preliminary investigation could distinguish between an important and a frivolous invention?—All that I can say upon that point would be that the tribunal ought to be composed of persons competent to form a judgment upon such subjects, and that they ought not to grant a monopoly unless they were satisfied that sufficient grounds existed for so doing.

1121. (*Lord Overstone.*) Take as a practical illustration the invention of gas, extracted from coal, as a source of illumination. Upon the supposition that there had been a solitary tribunal in existence at that time to determine upon the probable value of the invention, is there not strong reason to believe that they would have rejected it on the ground of its utter absurdity and uselessness?—Under any system you may pick out cases where a wrong decision would be come to, and hardship be occasioned.

1122. (*Chairman.*) But if in the course of a few years, five or six cases of undoubtedly valuable discoveries occurred, to which Patents had been refused on the ground of their unimportance or impracticability, if that is to be admitted as a ground, do you think that public opinion would allow the tribunal to continue; would there not be a pressure upon it greater than it would be able to sustain?—I can give no opinion upon such a question. I think that nothing can be worse than the present indiscriminate system, and I think that it is extremely important to contract it, and to make the granting of a Patent the exception rather than the rule.

1123. Then, as I understand you, you do not carry

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your opinion upon this point further into detail than this, that you think that any inquiry which would have for its result greatly to diminish the number of Patents taken out would be so far a gain?—Undoubtedly, in my opinion.

1124. (*Lord Overstone*.) You say that nothing can be worse than the present system. Can you state distinctly what are the practical grievances of a serious magnitude which arise under the present system?—Yes. I will begin with a grievance which I complain of personally, and that is the necessity which I am under of taking out Patents, not for the purpose of obtaining for myself a monopoly, but simply for the purpose of preventing other persons from excluding me from my own inventions. It is a source of considerable expense, and of a very great deal of trouble and vexation to me. In all cases I find it necessary to take the preliminary step in a Patent, but in many cases I find it necessary actually to mature a Patent, and to take out a Complete Specification, and for this reason, that if I bring forward an invention, and do not patent it, another person patenting an improvement upon that invention really appropriates the whole invention, because no person will take the original invention without the improvement. That is a personal grievance which I continually experience.

1125. (*Chairman*.) You are compelled to become a monopolist in order that a monopoly may not be practised as against you?—Yes, that is one point, and also to prevent myself from being actually deprived of my own inventions by other persons patenting improvements upon them.

1126. (*Mr. Forster*.) It is the case, I believe, that as regards a complicated machine which contains many different parts a patent may be obtained for that machine which covers the whole of the different parts of it. Some other person, yourself for instance, might make a very considerable improvement which would affect one small part of that machine?—Exactly so.

1127. But you are unable to do so because you cannot interfere with the Patent over it; do you find practically that that clogs the progress of invention?—I will take one of my own inventions. I will take an hydraulic crane, for example, which I will suppose that I do not patent, and I will suppose that another person invents an improved valve and applies it to hydraulic cranes, and that he patents that improvement upon hydraulic cranes, clearly the result of that is, that if it gives an improved character to the whole machine he will obtain the monopoly of the machine, because he has a Patent for the improvement, and that carries with it the machine itself.

1128. That is not precisely what I meant. My question was this, that the Patent may comprise the whole of the different parts of a machine, but you or any other person might make an invention which would improve one part, but in consequence of the Patent applying to the whole you are unable to do so?—Clearly. No one attempts to improve a patented machine, because the Patentee would take all the benefit.

1129. Have you found that that has practically been the case?—Undoubtedly.

1130. (*Mr. Hindmarch*.) But would not the effect be precisely the same in the case which you describe, whether you yourself patented your invention or not?—If you did not patent your invention another man might patent an improvement upon it, and if you did patent it, so he might patent an improvement upon it?—No, certainly not, because if he patented an improvement upon it his improvement would be of no value without the machine itself.

1131. Still you could not use his improvement?—That is another matter. I do not complain of that; but I complain of his sweeping away my invention by sticking an improvement upon it.

1132. (*Lord Overstone*.) You have quoted as one of the practical grievances the circumstance that you are compelled to take out a Patent for invention as a

means of protecting yourself against other Patents which would be taken out to your annoyance?—Certainly.

1133. What is the grievance of your being compelled to take out a Patent?—The grievance is that I am subject to the expense and to going through all the trouble necessary for doing so.

1134. (*Mr. Forster*.) And also, I suppose, that you subject yourself to the fear of lawsuits against it?—If I take out a Patent, then of course I am liable to litigation.

1135. (*Mr. Fairbairn*.) If I understand you correctly, you do not appear to object to a single monopoly; you do not object to the inventor of a Patent useful to the public having a monopoly, but you object to a series of monopolies for one improvement after another?—No; my private opinion goes against all Patents, but I say that I will not press that question. Then I say the next question is to narrow the system as much as possible, so as to diminish the number of Patents, and make the obstructions as little felt as possible.

1136. (*Mr. Hindmarch*.) But is not almost every Patent which is now granted a Patent for an improvement?—A great many Patents are granted for things which are no improvement at all.

1137. (*Lord Overstone*.) It is the result of your personal experience that the vast number of Patents now granted does create a serious obstruction to the convenient progress of inventions which would follow the advance of human ingenuity even without getting Patent rights?—Yes, most distinctly. I have many times found it necessary to desist from following up ideas of improvement in consequence of the existence of a Patent which would have absorbed such improvements when brought to maturity. The ground is so occupied by Patentees, and there is so much uncertainty as to what Patents are valid and what are invalid, that it is difficult to find a spot to work upon without risk of interference.

1138. (*Vice-Chancellor Wood*.) Even when you have patented your original invention so as to secure it, if in the 13th year somebody else invents an improvement, at the end of the 14th year you cannot have your original machine with his improvement?—Exactly so.

1139. (*Mr. Forster*.) When a person thinks that he has altered a machine so as to make it much more beneficial, he is in great danger in doing so of finding that he interferes with some part of some Patent?—Yes, there is very great risk, and I have continually found it necessary in my own experience to turn aside from the natural course which one would take as a machinist, in order to avoid somebody's Patent which is of no value at all, a dormant Patent, which the possessor has not ability to follow up and turn to a useful result, and all that it produces is an obstruction, and you cannot follow the course which you believe to be right simply because this dormant Patent exists. That inconvenience I have experienced myself several times.

1140. (*Mr. Fairbairn*.) Have you any opinion to give as to how to get clear of these obstructions so as to remedy that evil?—I have already stated that I think that such a stringent preliminary inquiry should be made as would choke off the vast majority of these Patents.

1141. (*Vice-Chancellor Wood*.) Another suggestion has been made that if the preliminary inquiry should be found to be very difficult in ascertaining the real value of a Patent, at the end of the third or the seventh year, when you are now called upon to pay an additional fee, you should be obliged to prove that your Patent had been in effect a useful discovery, so as not to obtain a renewal as a matter of course, but to be obliged to show some advantage derived from the discovery?—I think that that would be a very wholesome regulation. I think that if the Patentee was obliged to go before the first tribunal periodically, and prove that he really merited a continuance of the monopoly, it would be a very proper thing.

1142. (*Chairman.*) Have you considered whether such an inquiry as you propose could be effectually conducted, where the applicant was pressing his personal claim on the one hand, and where there was no one to represent the public interest on the other?—He would have a better chance of succeeding, of course, but probably persons who were engaged in similar investigations would keep a watch upon his case.

1143. The claimant for a Patent would have the advantage of presenting his case thoroughly prepared to the Judge who had to try the case?—Yes.

1144. On the other hand, there would be no argument, and no person interested in proving that the invention was not new or that it was not useful?—Yes.

1145. Would it be possible, under those circumstances, for a tribunal to come to an unbiassed decision?—I daresay there would be very many cases in which persons would obtain Patents without sufficient grounds for them, but the cases would be less numerous than they are at present. Then another great evil of the Patent system is this, that an invalid Patent really answers the purpose of protection almost as well as a valid one. I believe that there is not one Patent in ten which would bear scrutiny, and the mere name of a Patent often answers all the purpose. Nobody will face the litigation necessary to get rid of it.

1146. In very many cases people prefer to pay black mail rather than undergo the expense of a lawsuit?—In almost all cases; I know that in my own experience, if I find that a man has a Patent which I am satisfied is not a valid one, I would rather go out of the way to avoid any conflict with him.

1147. (*Vice-Chancellor Wood.*) Or pay a small licence fee?—Or pay a small licence fee; but in the majority of cases one avoids the thing altogether, and adopts some less direct method of obtaining the same object.

1148. (*Chairman.*) May we take it that under the present system, if a man has obtained a Patent with little or no inquiry, although that Patent would not stand investigation if opposed, yet if the Patentee is content to impose a moderate tax upon those who want to use his invention, they will pay that sum without its being worth anybody's while to contest it?—Yes.

1149. And that in that case he is obtaining an advantage which it was never the intention of the law to give him?—Yes.

1150. Do you believe that the cases of that kind are very numerous?—Very numerous, and the cases are still more numerous in which the existence of a monopoly simply has the effect of deterring other persons from following up that particular line of improvement.

1151. They will not proceed upon that line of discovery because they find traps set for them at every step which they take?—Exactly so.

1152. (*Mr. Forster.*) Do you think that there would be a great advantage in shortening the term of Patents?—Yes, I think the less we have of them the better.

1153. (*Sir H. Cairns.*) Has it occurred to you whether you could have a preliminary inquiry attended with publicity; that is to say, if I may explain myself, with some sort of public announcement of the particular invention for which the Patent had been sought, so that persons might see what it was, and come in and oppose?—I have not given much attention to the machinery by which it should be carried out, but it occurs to me at the moment that it would be a proper course to give every person an opportunity of showing reason against a monopoly being granted.

1154. (*Lord Overstone.*) Would not that almost necessarily involve such a publication of the plan as would be destructive of the Patent?—No, I think not; it would be merely a publication of the title of the Patent.

1155. (*Sir H. Cairns.*) The title, as probably you observe in the publications weekly, does not give

very much information?—I think that it ought to give as much information as possible. I think that one of the great objections to the present system is the vagueness of the titles of Patents.

1156. Still you must have observed, I suppose, how difficult it would be to give a title which would accurately represent the invention?—Yes, and the difficulty is in defining an invention. In the case of copyright the thing claimed is distinctly defined. There is no possibility of two persons writing the same book or producing the same work of art, but two persons may and do constantly conceive the same invention. That is because the invention is not of that defined character that the subject of copyright is; there is a vagueness about it, a comprehensiveness which renders it very objectionable as a subject of monopoly, because you cannot grant a monopoly without excluding other persons who are working upon the same subject.

1157. (*Mr. Fairbairn.*) Would it be an improvement to place the Patent Laws upon somewhat the same principles as copyright?—If you could make the subject of a Patent as distinct as it is in copyright, of course it would do away with much objection; that is to say, if a man could have a monopoly of a machine in all its details, without any power of departing from it at all, there could be very little objection to that, but he has a monopoly of the general idea of the machine, or the process, or whatever it is, and the consequence is, that nobody can improve upon that idea except for the advantage of the Patentee, and therefore nobody will attempt to do so. I am quite satisfied that a very great number of inventions which have remained inoperative for years and years, many of which I could easily name, would have been brought to perfection very much sooner if it had been open to all the intellects of the country to grapple with the difficulties of them.

1158. There is no doubt that that would be at the expense of the original inventor?—The question is, whether you are to consider the interest of the individual inventor or the interest of the public. I think that it ought to be clearly laid down which is to be considered.

1159. (*Vice-Chancellor Wood.*) May you not consider both?—The public ought not to be sufferers.

1160. The inventors are the inventing part of the public?—Yes, but they are a very small portion of the general public.

1161. (*Mr. Fairbairn.*) It appears to me that the public are not entitled to any great advantage from an invention when they have done nothing for it, and that the original inventor should not be left unprotected?—Before one can discuss the subject it should be clearly laid down upon which principle we are to proceed, whether we are to regard the interest of the inventor, or the question of public policy.

1162. (*Mr. Hindmarch.*) Do you think that the original inventors would be likely to give their inventions to the public if they had no remuneration or reward?—My firm conviction is, that if there was no artificial reward for invention you would have just as much as at present.

1163. (*Vice-Chancellor Wood.*) With respect to patenting a machine, if you only gave the Patentee a right to the machine in its entirety just as it exists, would that be worth anything; would you not have mechanical equivalents immediately?—Yes, and you would very soon have an improvement upon it. I do not think that you can reduce the Patent right to the same basis as copyright; if you could it would be unobjectionable.

1164. (*Mr. Hindmarch.*) Is not one difference between copyright and Patent law this, that with regard to copyright a man actually creates that which is the subject of it, and in the other case he merely discovers the capability of a thing which pre-existed?—No doubt there is that distinction.

1165. Is not that a material distinction between the two things?—Yes, but I object to the "capability" being made the subject of a monopoly.

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1166. (*Chairman.*) The next question which I will put to you is, whether you have considered the machinery which is at present provided for dealing with invalid Patents?—No, I have not given any consideration to these practical questions.

1167. (*Sir H. Cairns.*) Although you perhaps have not considered the precise working of the law with regard to the repeal of invalid Patents, you would be able to give us your opinion on this point. Suppose that the question was between these two remedies for choking off, as you call it, worthless Patents—a preliminary inquiry on the one hand, requiring advertisement and an invitation to the public to come in and oppose, and thereby causing some delay, and, on the other hand, an easy and cheap method, if it could be provided, by which any person objecting to a Patent as soon as it was completely specified, could come and ask for the repeal of that Patent, obliging the Patentee to pay the costs of the proceeding, supposing the Patent should be repealed—of those two remedies which would you think the preferable one; you observe that the one is a preliminary investigation before the Patent is granted, and that the other supposes the Patent to be granted, and to be completely specified, and the mode of working it to be declared in black and white, and then some person, or some society, or trade, who think that it might be likely to hamper them, come in a summary way before a proper tribunal, and state their reasons why that Patent should be cancelled?—That would make the investigation in effect preliminary to the granting of the Patent.

1168. No, I suppose the Patent to be granted?—If you make it subject to repeal, it is very much the same thing. I think that it would be very proper that a man should completely and distinctly bring forward his Specification before he acquires any Patent right.

1169. At present the course is that in the first instance a Provisional Specification, which is somewhat summary and curt, is put in, and upon that protection is given for a certain number of months, during which the Provisional Specification is kept secret, and by the end of that time there must be a Complete Specification lodged, and then and not till then the full Patent is granted?—Yes.

1170. What I desire to lead your mind to is this, would you think it better that the discussion as to the validity of the Patent should take place upon the full Specification so lodged, or upon the more crude and short Provisional Specification, which must be the case upon a preliminary inquiry?—It strikes me that it ought to be upon the Complete Specification.

1171. (*Chairman.*) In the event of its being thought impracticable to establish a really searching investigation in the first instance before the Patent was granted, do you think that it would be almost equally satisfactory to those whose interest it is to contest Patents, if they had an opportunity of doing so at the least possible cost, and before a court specially set apart for that purpose?—If you had a tribunal in the first instance, there would, even if there was no opposition, be a searching investigation, which I have no doubt would put a stop to a very great number of Patents. I believe that a very large proportion of them would fall to the ground upon the smallest investigation.

1172. (*Lord Overstone.*) Do you mean investigation as to novelty or want of utility?—Want of utility; want of importance. I should certainly make importance a criterion as well as novelty.*

* In investigating a claim for a Patent, I conceive that a Court would have to inquire not only as to the novelty of the invention, but also—1st, whether it be of sufficient public importance to justify so grave a step as the granting of exclusive rights by the State. 2nd. Whether the character of the invention be such as to warrant the presumption that it would not have presented itself to ordinary minds when the occasion for it became generally felt. 3rd. Whether the granting of a monopoly to the inventor would not in his particular case seriously interfere with the public interest, by preventing other persons making improvements in the same direction. 4th. Whether the inven-

1173. (*Chairman.*) You would leave a discretionary power in the court to deal with the importance of the invention?—Yes.

1174. (*Mr. Fairbairn.*) A great many of them would dissolve at the very sight of an investigation?—I think that an immense number would.

1175. (*Lord Overstone.*) Do you think that a Court could be constituted which would command the confidence and the concurrence of the public in deciding the question of the utility or the importance of a Patent claimed?—There is no doubt that they would make mistakes, and perhaps frequent mistakes, but still, I think that it would curtail the amount of mal-administration which we have at present to a very great extent.

1176. Do you think that those mistakes could be kept within such narrow limits that that Court would not lose the public confidence?—I should think that it would be so, though I feel a difficulty in giving an opinion upon that point. It would, of course, depend very much upon the competency of the persons. I think that it is possible to have persons so competent as to preserve the confidence of the public.

1177. What would be your idea as to the mode in which such a Court should be constituted?—I am answering questions at present without any previous consideration, and therefore I do not know that my answers are of much value; but I think that you would require to have very first-rate men, and to offer a sufficient pecuniary inducement to get such men.

1178. (*Chairman.*) You have been, I think, personally concerned in Patent cases, in defending or resisting Patents?—No; I have been very little mixed up with them. I have always kept clear of them.

1179. Is it within your knowledge that there are great complaints of the delay and expense at present involved in Patent causes?—There are very great complaints of the trouble and expense, and generally of the litigation, to which people are subjected; and there is not much confidence in the competency of a jury to determine such questions.

1180. Do you conceive that it would give equal satisfaction to the public if such cases were tried without a jury, the Judge having the advantage of scientific men sitting as assessors with him?—I think that if, instead of a jury, you had a body of scientific men to assist the Judge, it would be a very great improvement.

1181. You think that if the Judge were so assisted, there would be a willingness to allow the case to be decided by him without the intervention of a jury?—I should think so, but I do not think that my opinion on these points is of very much value.

1182. Have you considered the question of compelling Patentees to grant licences for the use of their Patent inventions?—I think that that would be an improvement.

1183. (*Mr. Hindmarch.*) Do you think that it would be a practicable improvement?—I do not see why it should not. I see no reason against it.

1184. How would you define the terms upon which you would compel a Patentee to grant a licence?—It would be a question of what the value of the invention was. An invention without much merit would not be entitled to the same licence fee as one with considerable merit.

1185. How would you propose to determine the amount to be paid?—It would be in the discretion of the tribunal, whatever it was. I can imagine a Court

tion be of a nature to require considerable expenditure on the part of the inventor to bring it into complete practical operation. 5th. Whether the invention has been already sufficiently reduced to practice to enable a safe judgment to be formed of its efficacy, or whether it is a mere scheme requiring working out in the detail, and proof by trial before its value can be ascertained. I think the Court ought to be guided by such considerations as these in determining whether a Patent ought to be granted or not. I am not insensible to the difficulties under which the Court would labour, but if such investigation be impracticable, the evils of the system will, in my opinion, be incurable.

established for the adjudication of all questions of this kind, everything appertaining to Patents, and that that Court should have a jurisdiction upon such points as you speak of.

1186. (*Lord Overstone.*) Do you think that any tribunal could estimate the pecuniary value of an invention, except by the guidance of the subsequent practical experience of its working?—But if there has been no practical experience of its working, I do not see that there is any claim for compensation.

1187. If you were to establish a system of compulsory licence that licence must set forth at the outset the pecuniary terms upon which the patentee is to be compelled to hire out his patent; how are those pecuniary terms to be adjusted beforehand until the Court is instructed by subsequent experience as to the real practical value of the invention?—The question might be brought before them from time to time according as the merits of the invention were exhibited.

1188. (*Mr. Forster.*) The suggestion has been made that the Court should be empowered to compel a licence after three years, after the invention had got into operation. Do you think that if scientific men were appointed as assessors to assist the Judge in the trial of Patent cases such assessors would be capable of assessing the value of a licence after two or three years of practical working?—Yes; I should think so.

1189. (*Mr. Hindmarch.*) Does it not often happen that an invention turns out to be much more valuable than is presumed at the commencement of the Patent and sometimes just the contrary?—Yes, its value will vary according to the progress of events.

1190. If the value was to be ascertained at the end say of the fourth year, it might be found that the licensee at the end of the 10 years would be in a bad condition, or he might have very much the advantage of the Patentee?—Yes; it would be quite feasible to allow him to bring his claims before the tribunal periodically.

1191. Would not the consequence of that be that the licensee would be embarking in a manufacture, he being uncertain at the time what he would have to pay for licence duty in the course of the next two or three years?—At present it is quite uncertain too, unless he makes an agreement with the Patentee.

1192. (*Sir H. Cairns.*) Have you known in practice Patentees refuse licences?—I have known Patentees very exorbitant in their demands for licences, far beyond the merits of their inventions.

1193. (*Lord Overstone.*) Would not the granting of compulsory licences be in reality fixing by public authority the price at which an article was to be sold?—I think that that would be better than allowing the Patentee to fix his own price.

1194. (*Chairman.*) Would it not rather be fixing a money price upon a privilege conceded by the State?—Yes.

1195. (*Vice-Chancellor Wood.*) You have said that you have known cases of Patents lying dormant a long while, until the article became of more importance in the judgment of the public, and that then licences were taken out. Does not that amount to this, that the Patentee, by constituting himself judge of his own invention, does at last in those cases obtain his price?—Yes.

1196. And that it would be an injustice to him to compel him to lower his price?—No, not at all. He is able to get his price after the investigations of other people have given additional value to his Patent, that is to say, they have made improvements which he can appropriate to his Patent, and in that way it gives it an additional value.

1197. But they have built their improvements upon his invention, as I understand?—No; he gets possession of a certain idea; that, in the form in which he conceives it, is of no value, but at a subsequent period other persons following in the same line of discovery, probably without knowing of the existence of the Patent, make improvements, or produce the same

thing in an improved form, then he takes possession of that under his Patent, and is able to obtain a licence fee, and an advantage from it, which he could not otherwise do.

1198. (*Mr. Grove.*) He may prevent their practising their improvements, provided they embody his Patent, but he cannot avail himself of their improvements?—What I complain of is this, that a person obtaining a Patent for a crude invention prevents other persons from entering upon the same ground unless at their own peril, and I have known cases where, in the ignorance of the existence of a Patent, improvements have been made, and practical value given to an invention which has been previously patented, and then that Patentee has come forward and said, "That is my invention, and you must pay me for using it."

1199. (*Mr. Forster.*) Do you consider, supposing that the Patent Law was continued, that much of the evils which you at present feel to result from its operation would be removed by making licences compulsory?—I think that they would be mitigated.

1200. (*Chairman.*) You think that practically there would be no great difficulty in settling the terms upon which the licence should be granted by authority?—No, I think that the tribunal would be quite as competent, and more likely to do it properly, than the Patentee himself.

1201. (*Lord Overstone.*) To take practical cases, take such a case as the invention of the electric telegraph?—But I do not think that there is any such invention as the electric telegraph. It is one of those things which have gone forward by slow and gradual steps. It is impossible to put your finger upon the point at which the invention begins, and it is the case with all great inventions.

1202. Does not that increase the difficulty of fixing the price at which any one of those successive steps should be licensed out, take for an illustration, not the discovery of the electric telegraph, but the discovery of one of the stages which have ultimately established the electric telegraph?—But the question is whether the tribunal or the Patentee himself should be the judge of what he is entitled to. It appears to me to be more rational that a disinterested tribunal should be the judge than that the Patentee himself should.

1203. (*Mr. Grove.*) How would you meet this difficulty. Take the instance of the electric telegraph, there are an enormous number of Patents. I think we have heard them stated at some 400 or 500, at all events sounding in hundreds; but take a less number. Supposing there are 20 or 30 inventions, all being living Patents, each having some degree of merit, and each, as it were, overlapping the other, how would you adjust the relative merits of each of those parties, so as to give them with any chance of practical success remuneration from a licence duty?—That is just one of the difficulties arising out of the present complexity of the system. I think that the first step is to diminish that complexity, and not to grant so many Patents, and only to grant Patents for very prominent improvements, not improvements which present themselves by accident, but where there is merit; not only where the improvement is valuable to the public, but where the inventor is really meritorious, and where protection may be considered politic, in order to enable him to mature and perfect his invention. I think that if you adopted some general proceeding of that sort you would limit the number of Patents very much indeed, and diminish the complexity of them.

1204. Even with a smaller number, would you not have this difficulty, would not the value of the licence dues be dependent very much upon the relation of inventions to each other, say that within the 14 years there are half a dozen inventions, each of them would have affected the value of the previous invention, and be itself in turn affected by a subsequent invention, so that, if you fixed your licence duties at a certain sum in the year 1862, you would probably have to alter that again in 1863. Then if you apply that to

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even a limited number of Patents in the various arts and manufactures, you would have a constant fluctuation which might create a good deal of difficulty?—Still I think that it would be better than leaving it entirely to the arbitrary and exaggerated notions of value, which the Patentee naturally holds.

1205. (*Sir Hugh Cairns.*) Suppose that a Patent were granted for a particular manufactured article would you force the sale of that article at a certain fixed price by the Patentee?—These are subjects to which I have not given attention, but it appears to me, as a principle, that it would be a very wholesome thing to give a tribunal of competent men control over the reward to be paid to a Patentee.

1206. (*Chairman.*) In short, instead of giving to a Patentee the exclusive use of his invention for a certain time, you would prefer giving him simply a power of taxing, within certain limits settled by competent authority, all persons who should use it?—Exactly so.

1207. (*Mr. Fairbairn.*) Do you think that this compulsory system of licensing would benefit the public to any great extent, or do you not think that the Patentee had better go into the market with his Patent and do the best he can for himself?—I think that it would protect the public from the exorbitant demands of Patentees.

1208. If any Patentee is very exorbitant, it strikes me that the public will stand aloof?—Then the public will suffer.

1209. The public will suffer to a certain extent if it is a very valuable Patent?—Yes, and if the Patent has no value, the question does not arise.

1210. It is more than probable that the Patentee would come to his senses and find it necessary to reduce his demand?—I cannot help thinking that a discretion, lodged in disinterested persons upon that point, would be convenient.

1211. (*Mr. Forster.*) Have you ever come in contact with any case in which the owner of one or two of these Patents has managed to buy up other Patents so as to obtain full possession of an important machine, and thereby to obtain a monopoly of something which is of immense advantage to the public?—It has now become a very general practice for companies to buy up all the Patents upon a particular subject.

1212. In that case the power of fixing an exorbitant price really preventing the use of the article altogether operates very disadvantageously to the public?—No doubt of it. I feel that I am speaking upon details which I am not competent to give an opinion upon, because all these questions are answered merely upon the impulse of the moment. I have not given any consideration to them at all. My objection to Patents is upon the broad principle.

1213. (*Mr. Grove.*) As a general rule would not the principle of supply and demand act to a great extent in this way, assuming that in certain particular cases a patentee may refuse licences altogether, yet, as a general rule, a Patentee looks to profits from his invention, and if he finds that his demand is too high and that the public do not practice his invention, will not that lead him to reduce his demand so as to find the maximum which he can get by the sale of his invention, and which may be attained in two ways, either by a very large royalty from one man or more probably by a smaller royalty from a greater number. Would not the commercial principle of parties getting the largest market for their commodities at the most remunerative prices to them, apply as a general rule to Patentees?—I think not, because the Patentee is a monopolist, whereas, in other cases where you cannot deal satisfactorily with one man you go to another, but here the State grants to an individual a monopoly, and therefore the public are at his mercy. The question is whether there should not be some control over him to insist upon moderation in his demands.

1214. Is not the principle which I have mentioned found to apply to practical monopolies; for instance, the Post Office is a monopoly, and yet it has been

found more lucrative to charge a smaller rate of postage. Omnibus companies have been practical monopolies, and yet they have found it advantageous to charge low fares. Railway companies have had practical monopolies in a district, and they have found it pay better to charge low fares. It is frequently far more to a party's interest to charge moderate prices even when there is an entire monopoly?—But you are trusting entirely to the discretion of a person who has the privilege.

1215. I am assuming that he would be guided by the ordinary impulses which guide persons, namely their own interests?—I think that practically there is no doubt that the claims of Patentees are very frequently, and I may say generally, excessive, and beyond the real value of their inventions; but there may be cases in which new conditions of things arise, and the invention, if invention it may be called, becomes a matter almost of necessity, and the public must have it. The case which has been put I think is a very strong one, in which a public company or a large capitalist buys up all the existing Patents, and thereby acquires a power which may be exceedingly oppressive.

1216. (*Vice-Chancellor Wood.*) In that case they choose to avail themselves of their Patent simply by the user of it for themselves and their own profit?—Yes: there is another point which occurs to me, and that is this, in the vast majority of cases the invention, as described by the Patentee, is of a very crude and imperfect nature. It often occurs that if another person could take up that invention, and give it his attention, he would be able to mature it and greatly add to its value; he abstains from doing so because he knows that the result of the labour which he would expend upon it will only increase the charge upon himself for using the invention; that is a case in which I think it ought to be left to the discretion of a tribunal, whether an additional charge is proper or not. From my own experience I know of many cases in which I see that a person has a good idea, but in the form in which he has it, it is of very little value. If I took up his idea and gave additional value to it by giving it development, it would not be fair to me for that man to say to me, "I must charge you so much more," or that the public should pay him so much more for using it. I think that he should not be paid for improvements which he has not effected. In a case of that sort the tribunal would have an opportunity of controlling his demands.

1217. (*Mr. Forster.*) Is it not the case at present that there may be a machine over which such a company as we have described has obtained a right by buying up all the Patents connected with it, and that you, or anyone else, might see that there might be a very great improvement, but that that improvement could only be made by making use of a part of the things which were patented by the possessor?—Exactly so.

1218. Is it not the case that such possessor could refuse you a licence, and so prevent you from making the improvements altogether?—Certainly he could.

1219. (*Vice-Chancellor Wood.*) There might possibly be another mode of dealing with the matter. I spoke just now of compelling people, at the end of the third or seventh year, to show that their invention had been useful; do you think that it might be feasible, in order to meet such a case as has just been described, to provide that if a Patentee could not show that he had communicated the use of his Patent to others by means of a licence, that should be a ground for refusing an extension of the period?—Yes; I think that a general control over the Patentee is desirable.

1220. (*Chairman.*) With regard to the importation of inventions from abroad, after what you have stated, I need hardly ask you whether you consider that Patents should be granted to those who bring inventions into this country?—I do not, certainly.

1221. In practice, I presume, that any invention in France, or Germany, or America, of any importance,

is known in this country?—It is a matter of general publicity. There is such free intercourse between nations now, that everything going on in the world of invention is known in one country as well as in another.

1222. (*Mr. Forster.*) It would be almost impossible for any useful invention abroad not to be made use of here?—Certainly.

1223. (*Lord Overstone.*) Is it the fact that Patents are taken out in this country for processes which are in operation abroad, but which have not been previously introduced into this country?—Certainly. A process in actual operation abroad, which has not been published in this country, can be made the subject of a Patent.

1224. Is it practically the case that processes which are carried on abroad are brought into this country by parties who patent them here?—Yes.

1225. (*Sir H. Cairns.*) A great number, every week?—Yes, constantly.

1226. (*Mr. Forster.*) Is it not the case that it is a rare thing that a process which has been in operation for some time abroad is patented afterwards in England; is it not generally the case that a Patent is taken out in England at the same time as it is taken out abroad?—I think that, in the majority of cases, it is taken out at the same time certainly.

1227. Do you know of any cases in which a discovery or an invention of any importance has been at work for some time abroad, and has only been brought into England by a Patent?—I think that such cases used to be of not unfrequent occurrence; that a person travelling abroad met with some particular process in operation at some place, and took the first opportunity of patenting that invention in this country. That used to be frequently the case, but now that the intercourse between nations has so much increased and improved, and publications are so numerous, I should think that instances of that kind are comparatively rare.

1228. (*Lord Overstone.*) The greater intercourse and the greater publicity which now prevails generally throughout the civilized countries increases the security which we have that useful inventions in operation abroad will necessarily find their way to this country?—Yes, if you will let them alone they will come. If the object be to obtain possession of these inventions it is quite unnecessary to resort to any system of Patents, because they would find their way here without it.

The witness withdrew.

Adjourned to Tuesday next at half-past four o'clock.

Tuesday, 17th February 1863.

PRESENT :

The Right Hon. LORD STANLEY.
The Right Hon. LORD OVERSTONE.
VICE-CHANCELLOR SIR W. PAGE WOOD.
SIR HUGH CAIRNS, Q.C., M.P.

HORATIO WADDINGTON, Esq.
W. R. GROVE, Esq., Q.C.
W. M. HINDMARCH, Esq., Q.C.

THE RIGHT HON. LORD STANLEY IN THE CHAIR.

MONTAGUE EDWARD SMITH, Esq., M.P., Q.C., examined.

1235. (*Chairman.*) You have had a good deal of experience I think in Patent cases?—Yes; I have had a good deal of experience in them since I have been at the bar.

1236. Have you considered the question of a preliminary investigation before a patent is granted?—I have.

1237. Have you formed any opinion as to whether that would be expedient?—I think that it would be expedient to make the preliminary enquiry a little more stringent than it is at present, but I do not think that it would be possible to have a perfect inquiry or to make it final. It has occurred to me that the Law Officers require more assistance than

1229. (*Mr. Fairbairn.*) Do you see any objection to granting Patents to foreigners for inventions?—It is quite unnecessary; I have an objection to Patents of all kinds, as I have already stated; but in that case, unless you wish to benefit the foreigner, unless that be the sole object, as a matter of policy, I do not see what the motive to apply the Patent system is.

1230. (*Mr. Forster.*) Do you imagine that if we did not grant to foreign nations the power of establishing the Patents of foreigners in England, we should not obtain the right of patenting abroad?—It is possible that it might not be reciprocated, probably that would be the effect of it.

1231. (*Mr. Grove.*) Might not it be a serious detriment to this country if inventors in England had not the privilege of patenting abroad. The public would be, to some extent, shut out from an invention for 14 years in England while it could be practised in any neighbouring country as an open invention, and improved upon, and therefore other countries would have advantages which we should not have if there were not that system of reciprocal patenting?—Your question appears to me to be this, whether it would be advantageous that this country should have the power of patenting abroad; of course it must be an advantage that it should be so.

1232. You would be against patenting altogether, but assuming the Patent Law to be continued, is it not better that we should get the privilege of having our inventions patented abroad, and that there should be a reciprocal system of patenting inventions here than that we should be restricted to the opportunity of patenting them here and that our inventions should be used abroad?—If the Patent system is to be maintained, it may, perhaps, be expedient as a matter of reciprocity to allow foreign inventions to be patented, but I have not considered that view of the case.

1233. (*Mr. Hindmarch.*) Is it not the law in America at the present moment that they will only grant Patents to foreigners upon the same terms as foreign countries grant Patents to Americans?—I think that the American law does not grant Patents to foreigners at all.

1234. I have reason to know that they grant Patents to foreigners, but only upon the same terms as the nations of those foreigners grant Patents to an American citizen?—I was not aware that that was the case.

they now have in dealing with the applications which are made for Letters Patent. The scheme which I would venture to propose for a tribunal for the trial of Patent causes would include a panel or list of assessors who should assist the Judge in trying the cause, and it has occurred to me that the Attorney or Solicitor-General might select any two gentlemen from that list to report on every application made to him for Letters Patent as to the novelty and utility, and as to the degree of novelty and utility of the alleged invention.

1238. You think that the question of utility is to be considered as well as that of novelty in the preliminary inquiry?—I think so. I think that that is

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Esq., M.P.,
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Esq., M.P.,
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the time to consider the question of utility ; it is very ineffective to consider it afterwards ; and if it were considered then, I think it would stop a great many patents which are now granted and which had better not be granted.

1239. You would have the inquiry as at present, before the Law Officers, but with the assistance of two assessors, in the manner which you suggest ?—I think that it must be a provisional inquiry ; it cannot be a final one, because you cannot give such a notice as would bring everybody, whose interests are likely to be affected, before the tribunal which has to decide ; and I am not aware that it could be left in better hands than in the hands of the Law Officers, with some assistance, such as I have suggested.

1240. In practice it must always be an *ex parte* inquiry, I presume, because there would be no one interested on behalf of the public ?—I think that it must be to a great extent an *ex parte* inquiry ; it would be impossible to give such a notice as would reach all those who might be affected by the Letters Patent to be granted.

1241. And the public has no organization by which it could protect itself habitually against unfounded claims ?—There is no such organization, and we all know the difficulties of giving such a notice, even when it is honestly intended, as will embrace the whole subject of the invention, and of course there would be every endeavour on the part of persons who had not really invented a new thing to mislead by the notice which they inserted.

1242. But although the inquiry was *ex parte* you would allow of opposition, if any person was interested in making it ?—Yes. I think so ; I think that whatever you do the inquiry will be imperfect ; it must be to some extent *ex parte* ; that is to say, that all those who are entitled to be heard cannot be heard, for it is impossible to give sufficient notice. Then I think that great good is done by having somebody who is interested to watch the proceedings, and to suggest those objections which might not occur to those whose intellects had not been sharpened by competition, or by the fear that the Letters Patent, if granted, might affect them.

1243. Have you had occasion to observe whether inconvenience is caused by a multiplicity of Patents for trifling and frivolous inventions ?—Yes ; I think that in several cases in which I have myself been counsel very great inconvenience has arisen from the multiplicity of Patents which an inventor has had to wade through to see that he has not been anticipated. A man who is making an honest improvement where there is a great multiplicity of Specifications existing scarcely knows where to tread without probably encroaching upon some slight improvement which has been previously made, and which may be in itself a very small step in advance of that which has been done before. As far as I have seen every man who makes any change whatever in a machine, which he thinks at all beneficial, takes out a Patent for it, and embraces probably the whole machine, and leaves you to find out where his little improvement is.

1244. (Lord Overstone.) Do you mean that the objection from the multiplicity of small Patents involves evil beyond that of the trouble of investigating the previous Patents ; do you mean that it has come within your observation that there has been practical obstruction to further improvements created by it ?—That is not within my own experience, it is only what I have heard from those with whom I have mixed.

1245. (Mr. Grove.) You say that the Patentee describes the whole machine, leaving persons to guess or find out what is improved, but is he not bound by the law as it is to state it in moderately clear terms ; the law says that he shall “ particularly ” state it ?—In a case in which I had the honour to receive the assistance both of yourself and of Mr. Hindmarch we had a great discussion with reference to that point, but I think that the great difficulty in the Patent Law has been introduced by the decisions. I think

that the decisions have left the law very much in this state, that a Patentee may describe a whole machine (or pretty nearly all the parts of it) in which he has made some small improvement, and then say, without any particular claim, “ That is my combination.” If it turns out that you have infringed any part of it which happens to be the new part which he has made, he says, “ You are within my Patent,” and there is often great difficulty in finding out what is the particular step of improvement which he has made in, probably, a complicated machine.

1246. The difficulty which your first answer put into my mind was this ; you pointed out a difficulty undoubtedly, which results from the Patentee describing his invention generally, but could any law require him to state it with greater particularity than the present law, is it not rather a want of putting the law in force ?—I think that you might require a man to state at the end of his Specification the specific things which he claims as new, and I think that that is only fair to the public, and it would certainly prevent very difficult and troublesome inquiries.

1247. (Mr. Hindmarch.) Has not that more reference to the way in which Specifications are habitually framed, than to the number of Patents granted for small inventions ?—I think that there is mischief in both respects. As far as I have seen I think that Letters Patent are granted for improvements which are scarcely sufficient in degree to justify the grant of a monopoly. I think also that Patentees have been allowed too wide a latitude in the mode in which they have framed their specifications, and the way in which they have described what may be their invention, so that in fact the invention is lost in a very large description ; it requires great trouble to find it.

1248. Do you see any difficulty in making the Specifications more precise and definite with regard to what a man claims under his Patent ?—There would be some difficulty in it, but I think that that is a difficulty which the Patentee ought to undertake.

1249. Do you think that it is a protection which the public is fairly entitled to receive at the hands of the Patentee ?—Certainly.

1250. (Mr. Grove.) The public have that protection at present, but as I understand you it has been practically to some extent neglected. The Letters Patent at present require, upon the peril of the Patent being void, that the Patentee shall particularly ascertain and describe (very strong words) the nature of his invention, but that has been in some degree neglected ?—The construction which the Courts have put upon those words has allowed so much latitude that now many Specifications are drawn without claim at all, and you have to find out as well as you can from the language of the Specification what is the invention. I have no objection at all to requiring by positive law that a man shall state at the end of his Specification what are the specific things which he claims.

1251. (Mr. Hindmarch.) Are you not aware that according to the American system that is required in every specification ?—I was not aware of it.

1252. (Mr. Grove.) Unless the law was executed in a different way it seems to me that there would be very much the same objection, inasmuch as the Patentee would only at the end of his Specification say, “ I claim the combination herein described,” or something approaching more or less to that ?—I think that the Courts of Law would only want some legislative declaration which would enable them to avoid the difficulties which have already occurred, and to decide with more fairness towards the public than the existing decisions permit.

1253. (Mr. Waddington.) With respect to the preliminary investigation, would you leave it entirely as now to the judgment of the Law Officers, whether they required assistance or not, in judging of the utility and novelty of an invention ?—It has occurred to me whether that should be made compulsory on the Law Officers, or left to their discretion. I think that it might be fairly left to their discretion, but I should

imagine that in every case of difficulty the Law Officer would seek assistance.

1254. Have they not that power now if they think it desirable?—Yes, but they have it in an informal way. The Law Officers of course can call witnesses before them, but they have no recognized assessors, or persons who have any status given to them, to whom they can apply. My plan would be that they should take two from the panel of assessors, appointed to assist the Judge in the trial of causes; and I think that if you had a panel of 12 or 15 scientific persons you would establish among them an *esprit de corps*, and a desire to assist either the Law Officers or the courts in the questions submitted to them.

1255. (*Mr. Grove.*) You have stated that you would have the first examination more stringent than at present, but not final, do you mean not final as to the rejection of a Patent, or only not final as to giving a Patent which so to speak could not be subsequently invalidated?—I do not think that I would have finality at all. If by mistake a man's application was rejected, and he really had a good invention, I do not see why he should not make a second application.

1256. I mean a rejection unless he made a further application with better materials, you would make such a rejection final?—Yes.

1257. (*Lord Overstone.*) Would you authorize the Law Officers of the Crown with the assistance of these assessors positively to reject a Patent upon the ground of inutility?—I would. The Law Officers are selected from eminent persons at the bar, and with the assistance of assessors, I think that if they found there was very little utility in a Patent they might then reject it.

1258. Considering that inventions are, generally speaking, in progress, in the actually existing state of knowledge, do you think that a judgment can be safely formed of a conclusive character of what may be the utility of an invention without being aided by the subsequent experience of its operations?—The invention must be perfected before it is brought to be the subject of a Patent. You cannot have a Patent for that which is imperfect; the invention must be complete, and there must have been previous experiment to a great extent.

1259. But are there not many inventions in machinery, and also in chemical science, which you may call in that technical sense complete, but upon the utility of which no person in the existing state of knowledge is competent positively to decide, and which can only be decided by the subsequent experience of their operation?—There may be such cases, but I should think they were rare.

1260. (*Mr. Waddington.*) The extent of utility it would be impossible to decide, but it would be possible to pronounce whether a thing was absolutely and obviously useless?—Yes; there have been some things which have been useless, and which have been abandoned afterwards as useless, but which have been held for a very considerable time *in terrorem* over other inventors and improvers; then, at the last moment, when a Patent is coming into court it is abandoned and disclaimed under the present law.

1261. (*Lord Overstone.*) But is there not also the opposite case, of inventions which have been believed at the time when they were made to be of very little importance but which have ultimately proved to be of great importance?—I think that those cases may have occurred, but I think that they are extreme cases.

1262. Are you not exposed to the double difficulty?—You are giving a man a monopoly for a long period of years, and a monopoly which gives him a very great advantage over all others who are excluded from the use of the thing of which you have given him the monopoly. I think that it is a part of the price which he should pay for it that it should be useful.

1263. Do you not think, at the same time, that if you have given him a monopoly of an invention which is useless, the monopoly is of little value?—It is of

little value in itself, but it is very often of considerable money value and works considerable injustice to honest inventors, who would rather settle, or even take a licence upon reasonable terms, than go to the expense of defending an action which may be brought against them, and which involves very considerable cost.

1264. You would think then, that in the case supposed, although the monopoly may in itself be valueless, it may be of considerable importance in the way of inconvenient obstruction to others?—That is my view.

1265. (*Vice-Chancellor Wood.*) It has been suggested that the Patentee might be required at the end of three or of seven years, as might be judged best besides paying his fee for getting a renewal as he now does, to justify, to a certain extent, his Patent, that is to say, to show that it had been beneficially employed, would you think that a desirable course?—That is a novel course. Practically, that would involve a tremendous struggle at the end of three years.

1266. It might do so, with regard to those inventions which might be thought to be useful, but would it not sweep off a large number of admittedly absurd Patents?—It might.

1267. You think that would be providing a contest which was unnecessary?—I think that it would be providing a contest; you would then, probably, have three contests. You would have something like a preliminary contest before the Letters Patent were granted, one at the end of three years, and then the real struggle in an action.

1268. (*Mr. Grove.*) Do you think that the fixed term which we have of 14 years is better than any modification of it? There are some inventions which are of a comparatively trifling nature, but which come rapidly into commerce; whereas, there are others, which are of a much more important nature, but trade opposition and expense cause it to be many years before they can come into operation. We have now, by the Privy Council, the power of lengthening patents up to 28 years, being double the original term. Do you think that it would be desirable to shorten them at all, and to say that some Patents, for example, should only be granted for seven years?—In my opinion, 14 years is too long. I think that 10 years would be long enough, with the power which the Privy Council has of lengthening the term in cases of great merit.

1269. (*Mr. Hindmarch.*) Do you think that it would be wise to vest in the Lord Chancellor, or in the Law Officers of the Crown, a power to vary the length of a Patent according to the merit of the invention for which the Patent is obtained?—That would be a very difficult sliding scale.

1270. (*Mr. Grove.*) It would be subject to prolongation, it would not be final, it would only be granted, say for seven years, with the power of renewal at the end of the seven years in case the Patent should be thought worthy of it?—I think that it is better to take a fixed term for all, giving to some tribunal (and I do not know that it can be given to any better than the Privy Council) the power to extend the period.

1271. You would make that term shorter than the present one?—I think so.

1272. (*Chairman.*) Have you considered the question whether a change should be made in the mode of trying actions and suits by Patentees?—I have considered that point rather fully, and I have come to the conclusion that the present mode of trial by a jury is very unsatisfactory. I think that a jury are very competent to decide the easy cases, but that they are utterly powerless to deal with the complicated and difficult ones. Where there are long and difficult Specifications to be read through and to be construed and understood, and drawings and models to be looked at, it is quite impossible for 12 men in a jury box to understand either the Specifications, the drawings, or the models; they have no opportunity of inspecting the models, which require to be seen from different points of view, and thoroughly explained and ex-

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amined, yet the jurymen have to decide upon those very models and upon the minute differences which may happen to exist in complicated machinery. The consequence is that trials now frequently become abortive. There was one case before Vice-Chancellor Wood occupying nine days where the jury were unable to give a verdict, and in the same week there was a case before Lord Chief Justice Erle which took six trying days, in which the jury were again discharged without coming to a decision.

1273. (*Mr. Grove.*) And there was a third case at the last sittings, which lasted for two or three days, where the jury could not agree?—Yes; having seen a great deal of the trial of Patent actions by juries I have come clearly to the opinion that it is impossible that any jury can do justice, and in consequence of their being unable to understand the merits they look out for some topic of prejudice upon which they may hang their verdict. If they can be induced to think that a man has had advantages for looking at a machine, or if they think that he has obtained information from a servant they are very apt to be led away by that which they do understand, namely, that there has been some attempt made at all events to get at the means of imitation, and they are very apt to jump at the conclusion that the thing has been imitated. At all events I think that the trial by jury in these cases is most unsatisfactory, and I do not think that justice can be done, particularly as every day Patents assume a more complicated aspect, the machines are more complicated, and the differences are slighter and more subtle.

1274. (*Chairman.*) Are the juries who are employed to try these cases the same class of persons as those who are engaged in ordinary trials?—Precisely. They are taken from the same class of persons, and now from the same panel, except in the city of London. The special jurors are now placed in a panel as the common jurors are, and in all the counties they are summoned, and the jurors to try a Patent cause are taken from the panel which furnishes the jurymen for all the causes.

1275. (*Mr. Hindmarch.*) They are reduced from the same list?—Yes, there is a power in London and Middlesex to reduce.

1276. (*Mr. Waddington.*) There is a power to reduce by the parties in the ordinary way?—Yes. A man who has not a very good Patent but who has some plausible points in his favour will probably strike out the brains of the jury as was formerly the practice in another place.

1277. (*Chairman.*) And practically it may often happen that a question involving the details of a complicated machine is tried by a jury of whom the greater proportion have never seen a machine of any kind at work?—It is very often so. It is an accident, and is sometimes thought a piece of good fortune and sometimes the reverse to find a man on the jury who understands something of machinery, and then a very little knowledge being a dangerous thing, he is often as formidable for what he knows as the others are for their ignorance.

1278. Is there a desire on the part of the jury to discharge themselves of the responsibility of coming to a decision by suggesting a reference to arbitration?—Certainly; I have a case now before me which was referred simply from impossibility of trying it, it was so difficult; and another case was referred to Mr. Lush, a case between Sir Frank Crossley and Mr. Bright.

1279. (*Mr. Grove.*) And there was a third case in which the jury interposed, namely, *Wheatstone v. Wilde*?—Yes, and in the case of *Betts v. Menzies* in which I was engaged, which was tried before Mr. Justice Erle then a Judge of the Court of Queen's Bench; after a trial of six days the jury brought in a verdict, but some of them accompanied it with the remark that it was very unsatisfactory, for that they believed that they did not understand it; and Mr. Justice Erle said upon that, "Well then, gentlemen,

"I am afraid that that remark of yours has rendered "our week's work of no value."

1280. (*Mr. Waddington.*) Has the course ever been adopted of giving the jury the advantage of seeing the models and plans beforehand, as a view is sometimes given in other cases?—I do not think that that has ever been done.

1281. (*Lord Overstone.*) Your impression is that trial by jury is altogether inapplicable to that class of subjects?—It is.

1282. And you are prepared to suggest some improved form?—My notion is to make as little change as possible. I think that a very good mode of trial would be by the Judges, as at present; that is to say, one judge sitting to try the cause with the assistance of two or three assessors. I think three, to avoid the possibility of the two disagreeing and so there being no verdict. I think a panel of assessors might be established, consisting of scientific men, engineers, chemists, and others, from whom a selection might be made for the trial of the particular case for which they were wanted, and that those should be selected from the panel who were best fitted to try the subject of the patent which was then in contest. I think that they might be appointed to the panel by the Lord Chancellor, aided by the Chief Justices and the Chief Baron or by the President of the Board of Trade. The difficulty would be, no doubt, in the original selection; but I believe, that if you could get 12 or 15 men placed upon a panel of the description I have named, you might select from those for the trial of any particular case three very competent men.

1283. (*Mr. Waddington.*) By whom would the selection be made?—The selection might be made I think very satisfactorily and very easily, a summons might be taken out before a Judge of the court in which the action is brought to select from the list the three assessors, the parties would probably suggest who were the proper persons to take for the trial of the particular cause, and the Judge after hearing what each had to say would make his selection.

1284. (*Chairman.*) You would propose that those assessors should only be paid I presume when they were employed?—That of course is a question of detail, but I think that they should only be paid when employed. The parties would have to pay them liberally, but I think that there would be a great saving of expense even if they were liberally paid, because if you had assessors who were acquainted with the subject matter which had to be tried a vast amount of evidence which is now given really to instruct the tribunal might be saved, and instead of multiplying scientific witnesses, having four or five or even more marshalled on the one side and the other in order that either by the weight of witnesses or by repetition, the jury might be led to the one side or the other, one or two scientific witnesses who would explain the case on each side would be quite sufficient for the purpose, and the assessors would brush away so much which is irrelevant, and so much which, now after five or six days' inquiry, turns out to be irrelevant, that I think a great deal of time and expense would be saved by that mode of inquiry.

1285. (*Lord Overstone.*) With whom would you place the final decision; with the assessors or with the Judge?—What I would propose is this, in analogy to the present system, I would require the Judge to put in writing the questions to the jury which he might think necessary to a decision of the cause in point of fact, and I would require that the assessors should give written answers to those questions, and that their findings upon the matters of fact should be conclusive, and that the Judge upon those findings should deliver his judgment or his verdict, applying the law to those findings of fact, and enter the verdict for the Plaintiff or the Defendant upon the various issues as he might think fit. I would have the Judge's judgment or verdict subject to review in the court above as it now is upon all matters of law, and I would also give the court power to order a new inquiry in

point of fact if the Judge should report that he was dissatisfied with the findings of the assessors.

1286. (*Mr. Waddington.*) Then it would be a jury of three persons acquainted with the question instead of a jury of 12 who know nothing of it?—Yes.

1287. (*Mr. Hindmarch.*) And the majority to decide?—I suggest three. I thought of two, and I think that I mentioned that number in the House of Commons, but, upon further considering the matter, I think that it would be better to have three, and that the majority of the three should decide.

1288. (*Lord Overstone.*) Do you think that there would be any serious difficulty in finding assessors who could be relied upon as impartial, free from personal prejudices, and free from the prejudices which exist upon scientific subjects as well as upon other subjects?—I think that that is the principal difficulty, but I think that they might be found, and I think that if they were once found and placed upon a list they would feel a desire to do that which was right, and would acquire as a habit the sense of deciding the real questions without reference to persons and things as trained Judges now do. It is almost impossible to get any persons who have not been trained to be Judges to decide regardless of the persons and subjects with whom and with which they have been before dealing; but I think that the gentlemen who might be placed upon a panel of this sort would very soon come to decide quite fairly and quite impartially, and with a sense of the responsibility which certainly would attach to them.

1289. Do you think that it would be essential that they should not be themselves persons engaged in practical pursuits?—I think that if they could be found it would be most desirable that they should not be engaged in Patent matters, and I think that it would be indispensable that they should be persons who would not give evidence upon any Patent matter.

1290. (*Chairman.*) Would it be easy to find men conversant with questions of this sort who were at the same time entirely free from all business connections, and who might, therefore, be expected to be unbiassed?—That is the difficulty, but I think that they might be found. I think that you would not require a very large number, 12 or 15, in my opinion, would be sufficient, and I think that you might find those men.

1291. (*Mr. Waddington.*) They must have a very large remuneration, I think, to make it worth their while to perform the duty. If they were neither to be witnesses nor to carry on business of their own they would have to confine themselves to the duty of assessors?—I did not mean that they should not carry on business of their own, because a great many of those who are at present engaged on Patents carry on engineering and other business; it is only occasionally that they are brought into the Patent arena. I would rather that they should continue to carry on their profession unconnected with Patents.

1292. But there is hardly any manufacturing business in which some Patents are not continually in use, is there?—But a great number of civil engineers, analytical chemists, and so on, carry on business which is not a manufacturing business.

1293. Civil engineers have a very lucrative business as witnesses sometimes, have they not?—Yes; but in other matters besides Patent causes.

1294. (*Lord Overstone.*) Would you give to the litigating parties any power of objecting to an assessor?—Yes, in this way; both the litigants should go before the Judge, and together with him, select the three assessors, and of course they would then have power to object to a man, either from his antecedents, his connections in trade, or from his being intimate with the persons who were connected with the other side; and all those objections might be made, which of course would be listened to.

1295. Would you give the litigating parties a power of peremptory objection, or merely of submitting to the Judge the grounds of their objection?—I see no objection to giving them the right of peremptory ob-

jection, say to a limited number, so that the right should not be subject to abuse; and that after they had challenged one or two, then they should challenge for cause. I would leave the analogies to the Jury system as near as possible.

1296. (*Mr. Grove.*) The advantage of a peremptory challenge is this, that persons might frequently have a very strong objection to a member of a panel, and yet might not like to state it openly?—Yes.

1297. He might be a party mixed up with them collaterally in trade, and outwardly on friendly terms with them, and against whom they might not like to state their objection orally. You can only provide for that by something in the nature of a peremptory challenge?—I think it would be desirable that there should be power of peremptory challenge.

1298. Supposing that you have a rather small panel, say 12 or 14, as you have suggested, and supposing these to be engineers or advising chemists, how would you get over this difficulty; that nearly all such persons have a large, what may be called *clientelle*, a number of individuals whom they advise, and advising whom forms a source of income to them. If a panel of that sort were made would they not be likely to have a very large number of clients whom they would be constantly advising, and so be very much trammelled in performing anything like judicial functions?—I think not; I think that you might get gentlemen who if they were upon a panel, and felt the sense of responsibility, would say "I have advised in this case" and therefore should not be selected to try it;" just as a Judge says after he is on the bench, "I have advised in this case," and withdraws.

1299. A Judge is removed from that position; he does nothing else than act as Judge, and he receives no other emolument but a fixed and handsome judicial income; but I suppose that you could not give to these gentlemen an income which would enable them to give up all professional occupations, and therefore they would be concerned in earning money in other ways, which must necessarily affect their interests?—I think that you might select gentlemen who were perfectly competent to decide all Patent cases, and who were unconnected with the practical working of Letters Patent, and with the business of advising Patentees. If any of those gentlemen, who had been so engaged, were desirous of retiring from that branch of business, there would be an opportunity of their becoming some of these assessors.

1300. I was not speaking exclusively of their advising Patentees, but of their being mixed up with commercial business, either as advisers or partners, and receiving a large income from it, which would, necessarily give them an interest ramified into a large number of manufactures?—It is very difficult to get any tribunal which is perfect. You cannot get a jury without having the prejudices of the men who are brought into the jury box; they of course carry all their prejudices and all their associations with them, you take them at random, but I think that you might select men who would decide very impartially and very fairly, and there would be three; you would hardly find three men who would be biassed in a particular direction. I think that when a man is conscious that he is one of a body whose province it is to assist in administering justice, the desire to do justice will become a habit in his mind. The very man who, as a witness probably, has been warped, would become perfectly straight when he was acting as an assessor; and when he knew that he was depended upon for an honest and an independent opinion, and he would be checked by the others.

1301. (*Mr. Waddington.*) And by experience they would acquire the habit of applying their minds to the questions, and would improve very much?—I think so. I think that scarcely anybody makes a good Judge who has not been trained, either through the bar or the bench, because very few men have the power of looking at what is the point of the case in the abstract, and apart from the persons and things which surround them.

M. E. Smith,
Esq., M.P.,
Q.C.

17 Feb. 1865.

*M. E. Smith,
Esq., M.P.,
Q.C.*

17 Feb. 1863.

1302. (*Chairman.*) You consider that they would be acting more under a sense of responsibility if they had an active part in the decision, rather than if they were simply acting as irresponsible advisers to the Judge, with whom the decision should rest?—I think so. I think that if the responsibility of the decision rested with them you would find that their sense of right would prevail, and that you would generally get a correct decision.

1303. (*Vice-Chancellor Wood.*) Do you suggest this as a separate Court entirely devoted to this subject, or would you carry it on under the present system?—I propose to carry it on under the present system. I rather object to a special Court for the purpose.

1304. (*Mr. Waddington.*) And there would not be business sufficient for a special Court, would there?—I do not think that the mere trial of disputed matters would be enough for a single Court. If you gave the Judge of that Court the power of preliminary investigation there might then, I think, be sufficient work.

1305. (*Chairman.*) Would there not then be the great inconvenience that in some cases the same authority would be sitting upon an appeal from himself?—There is that difficulty, and I should certainly not recommend the entrusting any Judge with the absolute and final power of disposing of these important questions; he must be subject to some appeal, and the appeal must of necessity be to the regular Courts. I cannot myself see the desirability of establishing a special Court and a special Judge when you have the machinery already existing amongst the ordinary Judges. My scheme is very little more than substituting assessors for a jury.

1306. (*Mr. Waddington.*) I believe that there is very little individual responsibility among jurors now, but with the number of three there might be something of that sort?—With the number of three there would be a strong sense of responsibility, they would know that their fellows were looking on, and that the whole body would be disgraced if a man shrank from his duty or was withheld from his duty by private considerations.

1307. (*Chairman.*) Have you heard anything of the complaints which have been frequently made before this Commission that the Patent business occupies so much of the time of the Judges as to interfere with other trials?—Yes; there is very great complaint that the Patent causes stop the other business. For instance, the sittings in London, where the great commercial business of the country is tried, occupy from 12 to 14 days. If the sittings are commenced by a long Patent cause, which takes six or seven days to try, the commercial causes are of course postponed, and two Patent causes might occupy the whole sittings.

1308. (*Vice-Chancellor Wood.*) You conceive that your mode of trial would diminish that very much?—My mode of trial would diminish that, because the assessors would be selected from the special panel, and you would tell off a Judge to try these causes with the assessors.

1309. Would you have these causes going on at the same time as the others?—They might go on at the same time, or at any time when it was most convenient; they need not go on at the same time; that would be one advantage; it might be done in term with very considerable advantage; that however is a matter of detail which might be arranged

by the Judges; but the effect would be that you would get all the Patent causes out of the list of causes which are tried by juries.

1310. (*Chairman.*) As I understand you, you propose that from this same list of assessors who are to assist in the trial of Patent cases some should be selected who are to help in deciding, or to advise, upon the decision with regard to the first granting of Patents?—Yes, I think that that might be usefully done. The Law Officer might select the two or the three whom he thought out of the whole list best fitted to assist him in the particular case.

1311. Do you think that there is no risk that, in the event of so much authority in deciding Patent causes being given to a limited body of men, chosen as you propose, certain ideas or prejudices of individuals upon scientific subjects would become well known, and become matters of complaint?—It might be so, but I think that the list would be large enough (12 or 15) to prevent there being any practical difficulty.

1312. (*Vice-Chancellor Wood.*) I suppose that you would have a superannuation clause also?—Yes.

1313. (*Mr. Waddington.*) And it would probably be open to the Lord Chancellor to add to the list?—Yes, I think so. What has been suggested in the question of the noble chairman is an inconvenience which you must always have. As regards the 15 judges, although they do their work so excellently well, yet of course there are certain judges who lean in one direction, and certain judges in another, not because there is any partiality in the matter, but simply from a habit of mind. You cannot avoid that in any body of men.

1314. (*Chairman.*) Have you considered the question of compulsory licences?—I have. I have not been able to suggest to my own mind how that could be satisfactorily imposed on the Patentee. It involves of course the question of the amount of royalty; that must vary indefinitely.

1315. (*Mr. Waddington.*) It has been suggested that it might be fixed in the first instance, and imposed as a condition upon granting the Patent that the Patentee should let it for a certain sum?—All the objections which Lord Overstone suggested to giving the Law Officers any power on the question of utility would press still more strongly upon the power to fix the licence money at the very inception of Letters Patent before you really knew the whole value of the invention.

1316. It would be impossible to fix the real value—it must be a good guess I suppose?—It would be a guess, and you would be giving a man a property, and allowing another to deal with it for him.

1317. (*Chairman.*) Would you not rather put it in this way, that to grant Patents with a restriction of compulsory licence is, in fact, not to grant a monopoly, but simply to give to a man a certain definite amount of royalty upon the use of his invention?—That is so. It is very much like saying, you shall get so much from the public for your invention and no more, in fact, you take away the notion of property.

1318. (*Sir H. Cairns.*) Would it not also involve the necessity of fixing a price for the patented article, for the Patentee might be entitled and be disposed to manufacture himself all that would be required?—It would be so.

1319. (*Chairman.*) Is there any other point to which you wish to call the attention of the Commissioners?—No, I think not.

The witness withdrew.

Adjourned to to-morrow at half-past four o'clock.

Wednesday, 18th February 1863.

PRESENT :

The Right Hon. LORD STANLEY, M.P.
The Right Hon. LORD OVERSTONE.
VICE-CHANCELLOR SIR W. PAGE WOOD.
SIR W. ATHERTON, Q.C., M.P.

HORATIO WADDINGTON, ESQ.
W. R. GROVE, ESQ., Q.C.
W. M. HINDMARCH, ESQ., Q.C.
W. E. FORSTER, ESQ., M.P.

THE RIGHT HON. LORD STANLEY IN THE CHAIR.

Mr. RICHARD ROBERTS examined.

Mr. R. Roberts.

18 Feb. 1863.

1320. (*Chairman.*) You have been in considerable business as an engineer for many years?—I have.

1321. In the course of your business have you been led to consider the question of Patents, and the law affecting them?—Yes; I have had not only to consider it, but to pay for it.

1322. Have you had a good deal to do in defending the Patents which you have taken out?—No; only in one instance.

1323. Have you had some experience in resisting Patents that were claimed by other parties?—Often.

1324. Have you considered at all the question of the cost of obtaining Patents, and if so, do you consider it too large or too small?—I think it is much too large.

1325. Do you think it would be an advantage if it were reduced?—I think so.

1326. Have you considered the question, whether the payment ought to be made in one sum, or by annual instalments as some persons have proposed?—I think if the payment were smaller, and made in one sum, it would have a better effect, because, although small, it would be considerable to some men, and they would have to consider well before they jumped into it.

1327. Would you have the payment made in the first instance?—I think so, if it were in one sum.

1328. And no subsequent payment?—No.

1329. Do not you think there is any advantage in the present plan by which useless Patents drop out after a certain number of years, because the holders of them do not choose to incur the extra expense of continuing them?—I do not think there is any advantage in that plan. I have allowed, I think, five to drop out—either four or five—and I think they are quite equal to anything I ever did.

1330. Rather than incur the extra expense of a second Patent?—Yes; we know very well that if we continue a Patent, we shall have to continue to pay but we are not sure that we shall ever get anything for it. The most paying Patent that I ever had was nine years before it paid for itself the cost.

1331. What was that, the self-acting mule?—Yes; and there was another thing, the planing machine. I had no Patent for it, for I could not afford it; but it was nine years before we made more than two, although everybody who came was allowed to see it, and hundreds saw it; some of them were the most sagacious men we have, such as Fawcett of Liverpool, and Hick of Bolton; but I had a difficulty in inducing them to have the planing machine, which I urged them to have; some people will not buy new things. I have an invention now which has nearly run out, and I have not made a penny by it, and I am not likely to do.

1332. (*Lord Overstone.*) By new things do you mean things untried?—Yes.

1333. Then, how does a Patent ever come into operation if people will not try an untried thing—how does it ever become a tried thing?—Some person or other sees the merit of the thing, and tries it. The one I refer to is on too large a scale for ordinary people to try; it is an improvement in ships; it has run more than ten years.

1334. (*Chairman.*) What you have stated, I think, comes to this, that if a man goes to considerable expense to carry out his machinery, he does not want to have to take it down and put up another kind of machinery; and he would rather that neither he nor

any of his neighbours should adopt the new plan?—Just so.

1335. Do you think that the present term for which Patents are granted is not long enough to give remuneration to the adventurer?—It will rarely give more than four or five years, and then, however successful the thing may be, the man will not secure a great deal in that time; in the first year a very little, in the second year a little more, and so on.

1336. (*Lord Overstone.*) Do you object to the system of eliminating useless Patents by successive payments upon the ground that the period assigned is not long enough, or upon the ground that it is an essentially unsound principle of action?—I think it is rather that the Patentees are not persons to pay an exclusive tax, and they are more generally poor men, managers of works, who are most likely to invent.

1337. (*Chairman.*) You would wish them to obtain their Patents at less cost in the first instance, and have nothing to pay for them afterwards?—I that would be best.

1338. (*Lord Overstone.*) In that case by what means would you propose to eliminate useless Patents?—I do not think it matters about them, for if they are useless they will not meddle with the others.

1339. Would you grant a Patent to every applicant, and leave them to become dormant from the fact of their being inapplicable to any useful purpose?—Yes.

1340. You would trust entirely to that principle?—Yes.

1341. (*Mr. Grove.*) But do they not occasionally meddle with you—do not Patentees of useless inventions frequently threaten litigation, and cause litigation and expense?—They may threaten.

1342. Do not you find that people actually embark in litigation upon Patents which are frequently of small utility?—Yes.

1343. (*Chairman.*) I think you have been speaking chiefly of Patents for engineering and mechanical matters, where considerable outlay must be incurred in the first instance before the invention patented can be set up?—Yes, I refer to those more than any other.

1344. When you say that Patents do not pay as a rule for nine or 10 years, you do not speak of all classes of Patents?—No; because in the case of an improved button, a person does not mind trying one suit of clothes with new buttons on, every one being of the same mind, and the Patent pays very well.

1345. (*Lord Overstone.*) Should you say generally that although these Patents afterwards become of importance and value to the public, the majority of them do not become productive until after the lapse of a longer period than seven years?—I think that hardly any of them become productive within seven years.

1346. Do you think that the present state of the law requiring successive payments at the end of three years, and at the end of seven years, has practically destroyed any Patents that ought to have been continued longer in existence?—There are four or five of mine that have gone through that.

1347. Do you think that you have sustained serious injury by the obliteration of those Patents?—I cannot say for that, but when you have secured it you do not like to part with it, and it has cost me a good deal; there are drawings and specifications, and all those things to prepare. A Patent costs much money besides the office fees.

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1348. In the cases of those Patents to which you have referred, did you abandon them in consequence of the heavy payments you would have been compelled to make under the provisions of the law?—Yes.

1349. Those payments could only amount to 160*l.* or 170*l.* during seven years?—150*l.*

1350. Then the Patents so abandoned could not, in your estimation, have been of value beyond that extent?—I know that I should have to pay those sums, but I do not know that I should ever get anything for the Patents on account of the difficulty of getting the inventions introduced.

1351. (*Chairman.*) You think that men are willing to sacrifice a considerable prospective advantage which they do not feel sure about rather than face the certainty of having to make a comparatively small payment?—Yes.

1352. But has it not been your experience that an inventor so circumstanced would go to some capitalist and offer him a share of the advantages on condition of his providing the money for the payment?—If he knew of one perhaps he would, but there is a difficulty in finding such capitalists.

1353. (*Lord Overstone.*) Do you mean that those payments become an obstruction to a Patentee on account of his inability to make them, or on account of his unwillingness to make them, thinking that the payments are more than the value of contingent interest in the Patent?—It was my case latterly.

1354. (*Vice-Chancellor Wood.*) When you have reduced the fee, as you think it ought to be reduced, to a lower one, suppose half, it would still be, would it not, a boon to many inventors to be able to pay only half of that fee down, for say a term of four years, and then to pay the remaining half?—Yes, no doubt it would to a very great many, but I want to have the payment to stand in the way of those who would rush at a Patent upon the first idea, without giving it fair consideration.

1355. That would be one way of checking useless Patents; but with regard to the inconvenience that you referred to just now, namely, the inconvenience of useless Patents, have you never, in your progress of invention, found yourself impeded by having, as one witness described it, to creep round a Patent of a very unserviceable character?—No; I never found any inconvenience of that sort, there is always another way of doing the same thing.

1356. (*Lord Overstone.*) Your belief is that it would be desirable to increase the amount of the first payment with a view to check the impetuosity of Patentees, and also with a view to diminish the necessity of Patentees keeping up their Patents?—I do not know to what amount you would suppose the reduction to be brought, because there are many men who could not, if they would ever so, pay the first amount, they would have to apply to a capitalist, and then without security a capitalist does not like to advance anything without they have the Patent already secured.

1357. Our object is to ascertain your opinion as to the mode in which these payments ought to be dealt with. Are you of opinion that the first payment should be increased with a view to put some further check upon the impetuosity of applicants for Patents in the first instance, and that the subsequent payments should be diminished in order to facilitate the maintenance of Patents when once obtained?—I can hardly answer that question, for I have not given it sufficient consideration.

1358. Is it your opinion that the first payment to be made upon obtaining a Patent should be increased beyond its present amount?—I think it would bear being increased beyond its present amount provided there was no further sum to be paid.

1359. You wish the payment to consist of one sum at the outset?—I think it would work best in that way.

1360. There is another question that we have to consider a good deal here, and that is, whether a Patent ought to be granted with or without any pre-

liminary inquiry as to its novelty and as to its utility. What is your opinion upon that?—I have been always opposed to preliminary inquiries until lately, when I got a clause put in at the Inventors' Institute, of which I am a member—but that the committee that should make the preliminary investigation should not have the power of preventing an inventor from taking his Patent out—with that condition I quite approve of preliminary inquiries.

1361. If it is to be a preliminary inquiry which if it goes against the Patentee, does not prevent him taking his Patent out, of what use would it be, do you mean that there should be an appeal?—No; only to give him their opinion that the Patent is not a valid one; it can only be an opinion, for the cleverest men in the world cannot say whether it is really good or bad always.

1362. (*Vice-Chancellor Wood.*) You would suggest that those who conduct the preliminary inquiry should give their advice?—Yes.

1363. (*Chairman.*) And give the inventor a formal right to apply for a Patent and nothing more; but you would accompany that in every case with a statement on the part of the Law Officers, or those who acted for them, as to whether, in their opinion, it was likely to be good or not?—Yes, and that should be printed with the printed Specification; the fact of their decision.

1364. (*Lord Overstone.*) Do you use the word "decision" deliberately, because I understood your view to be that the opinion of the Law Officers of the Crown should be an opinion only, and not a decision?—No, I mean that it should not be a veto upon his Patent.

1365. (*Chairman.*) And an unfavourable opinion, where they entertained it, should be expressed in such a manner that it might afterwards be made evidence in a court of justice?—Yes.

1366. (*Lord Overstone.*) I presume you would consider that such an opinion given by the Law Officers of the Crown, unless it were given with the aid of competent advisers, would be rather a dangerous opinion than a useful one?—I think that very few persons would pursue their Patents further, having been informed that it was either old or useless; very few would, but there might be some cases.

1367. The object of my questions is to draw your attention to this fact, that such an opinion would be technically given by the Law Officers of the Crown; but unless the Law Officers acted under the advice and direction of some very competent persons, the opinion ought not to be of much value, and would not be of much value?—If the advisers were small in number, and they were obliged to attend to all cases, I think the opinion would be worth something; but if the number was large, and they were at liberty only to come when they pleased, and very few would attend, it would be worth very little.

1368. What kind of advisers to guide the Law Officers of the Crown would you suggest?—I think there ought to be persons who were very conversant with every branch of art.

1369. (*Mr. Forster.*) I understood you to say that you thought the opinion so given might be of advantage in a court of justice; but for what purpose would it be so in the defence of a Patent?—No; against it if it were bad; it might be in defence, or the contrary.

1370. You think it should be an opinion which should be used to the prejudice of a Patent when afterwards attacked?—Yes; I know that persons have taken out Patents, and have persisted in doing it, when they have been told by very competent authorities of the valueless character of them. I know of one instance in which a person was shown the very article that he was producing, that had been done and presented to the Society of Arts every year for a number of years consecutively.

1371. (*Chairman.*) I need hardly ask you whether that altered his intention with regard to taking out a Patent?—No.

1372. I presume he found the difference was small?—He went to another Patent Agent; the first Patent Agent to whom he applied showed him the things, but he went to another Patent Agent, who took out a Patent, and I believe he made money by it afterwards; it was for making engravings from metals.

1373. Have you in the course of your business experienced any inconvenience from having to deal with other people's Patents?—I never had to deal with them much; very little.

1374. Have you ever heard of such a case as this: that a firm engaged in a particular branch of manufacture will buy up all the Patents that they can get hold of connected with that branch of business, so that it is almost impossible for any other manufacturer to use any of the known processes without putting his foot upon some one of those Patents, and then being threatened with a prosecution?—I have heard of such cases, but I have no particulars about them. There is, for example, the permanent way, they have been doing something in that way, I believe.

1375. You have heard of such cases, but they have not come within your experience?—No.

1376. (*Vice-Chancellor Wood.*) You have not suffered in any way?—No.

1377. (*Chairman.*) You are aware that many Patents are now taken out for advertising purposes, and taken out for very trifling and insignificant inventions, involving no real principle of novelty?—Yes.

1378. Do you think that Patents of that kind ought to be refused, or would you allow them to be taken out freely as at present?—I would allow them to be taken out freely, and that is one reason why I would rather that the payment should be made first, that they may be sure they will have to pay.

1379. Is not that coming back very much to the system that existed before the reform in the Patent Laws 10 years ago, when Patents were so costly that practically no man without capital could take one out?—To some extent it is, but I do not want the sum to be larger; the cost of a Patent is more to me now than it was under the old law.

1380. How is that?—Because it is not always necessary to take one for the three kingdoms; a Patent costs about 175*l.* now.

1381. Not in the first instance?—No, but it does ultimately.

1382. Including the fees to the Patent Agents, I suppose we may put it at about 50*l.* in the first instance?—No.

1383. Including, as well as the legal expenses, those to which you are necessarily put in consulting Patent Agents, what would it be?—40*l.* or 50*l.*, I daresay.

1384. (*Vice-Chancellor Wood.*) A Patent for England, I think, before cost about 160*l.*?—I think 112*l.* for England, and a little less for Scotland, and little more for Ireland.

1385. (*Chairman.*) You do not think that the multiplicity of Patents for things which are of no real value as inventions is any inconvenience to the public?—I do not think it is, because the ideas which they throw out may be made use of by somebody else.

1386. Might not that be done if there were no Patents taken out, and done in a much better manner?—If you could get every man to speak out; but they will not do that.

1387. You think that a man will not produce his invention to the public unless he is protected by a Patent?—I think that it would not be made known to the public.

1388. (*Lord Overstone.*) Do you think that Patents in themselves useless, are nevertheless often valuable in suggesting to other persons ideas which would probably not have occurred to them otherwise?—Yes, certainly.

1389. (*Vice-Chancellor Wood.*) Have you defended actions by Patentees yourself?—Yes.

1390. I presume you defended some of those because you thought the Patent was void from being

useless?—I do not recollect any particular case now, but I have been on both sides.

1391. When you have defended an action, I presume that you thought the Patent a bad one, or you would not have defended it?—Yes.

1392. So far you were put to inconvenience by having to take part in such an action?—I have not defended it on my own account; we defended, in one instance, the self-acting mule.

1393. (*Mr. Hindmarch.*) You used the term "defend," I believe, in the sense of defending a Patent?—Yes.

1394. (*Vice-Chancellor Wood.*) Have persons sometimes brought actions against you for infringing their Patents?—Not against me.

1395. (*Mr. Grove.*) You have told us of the difficulty there is in getting an invention taken up by the public; if there were no Patent Law do you think the difficulty would be so great that many inventions would be lost on account of persons having no stimulus to carry them out?—If a person had no prospective advantage from his Patent he would never go to the expense of perfecting any invention. Take the case of the self-acting mule; we should not have spent thousands upon a thing of that kind for the benefit of others; and there are many inventions as to which persons have to expend very large sums, for there are many things that cannot be seen through all their parts without experiment.

1396. (*Mr. Forster.*) You do not think that if you had gone to a large capitalist and pointed out to him the advantage it would be in carrying on his trade to apply the self-acting mule, the advantage that it would give him without a Patent over his neighbours, that that would have been inducement enough?—No; because he would only have my word for it.

1397. You do not think that you would have been able to convince any capitalist, and so induce him to advance the money requisite to enable you to gain a Patent?—Capitalists would have been very unwise if they advanced money too readily in that way.

1398. (*Lord Overstone.*) You mean that no one capitalist would spend his money upon perfecting a machine, which machine, when completely perfected, would be equally at the command of his competitors as of himself?—Surely.

1399. (*Mr. Hindmarch.*) At the same time, it must be uncertain whether it would ever be perfected at all?—Yes, very doubtful.

1400. (*Mr. Grove.*) It requires the self-interest of the Patentee, so to speak, to force it upon the public?—Yes.

1401. (*Mr. Forster.*) You do not think that the advantage of being the first person to possess a thing would be enough to compensate without an exclusive right?—No.

1402. (*Lord Overstone.*) That would depend, I presume, upon the amount of outlay that was requisite to complete the invention?—Yes, in a great measure.

1403. (*Chairman.*) In point of fact I take it that the first possessor of a new machine would probably have it in the most imperfect form, and it would probably be the man who stepped in some two or three years later, after having observed the working of the machine as already set up, who would produce it in the most perfect form?—I do not know whether that would be the case or not. Whilst it was in the hands of the Patentee, and he had the exclusive make, I think he would be likely to improve it more than anybody else.

1404. (*Mr. Hindmarch.*) Suppose he had not the Patent?—If he had not he would not have the same interest in pursuing it.

1405. (*Mr. Grove.*) Would the absence of Patents for inventions, in your judgment, have any effect in producing secret trades, or have you had any opportunity of judging whether non-patented inventions are used much in secret trade?—I do not think there is much secret trade, but I know this, that no trade can be kept secret long, a quart of ale will do wonders in that way. I can give the Commissioners one instance.

Mr. R. Roberts.

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Mr. R. Roberts.
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A party had some power looms and he thought very highly of them, but he had made an improvement and was about to get about 300 or 400 of them put up, he sent his patterns from Staleybridge to Manchester to have castings, and he sent a box with the patterns in, in order that they might lock them up every night, but the day after they were sent to Manchester a person came from Staleybridge to me and told me of this fact, but he said, "You shall have the first set if you like to have them," but I declined.

1406. (*Mr. Grove.*) Still there are some instances even now of trades being kept secret, and never being discovered?—There may be.

1407. (*Mr. Hindmarch.*) With regard to the manufacture of machinery, I believe it is very difficult to keep that secret?—Yes, especially when the objects are large.

1408. (*Chairman.*) With respect to trying suits instituted by Patentees, do you think that any change in the mode of proceeding would be advisable?—I should think it would be better if there was a different court where the jurors would be likely to know more about the subjects they were trying; for, they are often brought before courts that know nothing about the matter and tried. I remember a lace machine case being tried at Westminster, and a combing machine case being tried down at Chelmsford.

1409. That was a case, or it may have been a case, in which very complicated questions of machinery would have been tried before a jury who perhaps had never seen a machine in operation of any kind?—Yes.

1410. (*Mr. Forster.*) You do not think that the knowledge which might be possessed by a barrister and by a judge would compensate for the ignorance of the jury?—No, I think not; and, in one of the two instances I have referred to, the Judge knew as little about it as any man in Court, but there were six of the jurors who really were clever in that case, they had inspected the machine over and over again, and made themselves quite familiar with it.

1411. (*Vice-Chancellor Wood.*) What would you recommend instead of a jury?—A jury of men selected from the trade or profession.

1412. Would you have a permanent body of scientific men, or merely persons selected for the occasion?—Men taken for the occasion.

1413. Would it not be difficult to find them, if they were engaged in the same business, unprejudiced either in favour of the plaintiff or the defendant?—I should think not.

1414. (*Mr. Grove.*) Would they be liable, not to prejudices as to a particular litigant, but to prejudices arising from their previous experience?—You must always be liable to difficulties of that sort with all classes of men.

1415. You think there would not be more difficulty in such a case than in any ordinary case?—I think not; they would hear the subject explained by a barrister.

1416. (*Chairman.*) Do you think it would be advisable that such assessors or assistants to the Judge should only advise him, or would you have them pronounce a decision like a jury?—I think that they should give their decision like a jury, as to whether there was an infringement or not, if it were an action for infringement.

1417. (*Mr. Forster.*) How many of them do you think it would be advisable to have?—I think the number should not necessarily be large, perhaps half-a-dozen, or, if an odd number was better, five.

1418. Would it be an advantage that there should be a certain number, say two dozen of those persons, perfectly competent to be assessors, giving to each party the power of challenging anybody who they thought might be partial or prejudiced?—I have not thought very carefully upon that subject.

1419. (*Vice-Chancellor Wood.*) Would you let a

majority decide, or require them to be unanimous?—I think it is not necessary that they should be unanimous, but I think that every man should write his opinion down. I think that would be a great check upon their honesty or dishonesty.

1420. (*Chairman.*) Have you considered the question as to whether it would be better to have a special Court in which to try Patent cases, or whether they should be tried by any of the Judges with the assistance of such assessors as you propose?—I think a separate Court would be better. I know that to be pretty generally the opinion entertained by those who have considered the subject.

1421. Would it be possible to make the granting of licences for the use of patented inventions compulsory?—I do not see much necessity for it. All those who have patented inventions are anxious enough to grant licences, and generally on reasonable terms.

1422. You do not think that, in practice, it often happens that a man prefers to work his own invention exclusively, thinking that he shall make a great profit by so doing, and so locking up the advantage from the rest of the trade?—I do not think it does.

1423. You think that that may be left to a man's own feeling of self-interest?—Yes, I think so.

1424. Is there anything else connected with this subject that you would like to state to the Commission?—I do not think of anything.

1425. (*Lord Overstone.*) Looking at the whole question generally, do you think that the existing state of the Patent Laws inflicts any grievous injury upon the public?—I think it does.

1426. And you think so principally upon the two grounds which you have stated, the incompetency of the present Courts and the bad arrangement as to the preliminary payments?—I think that the payments have much to do with it. Inventions are kept back, and I think there is much injury suffered from that.

1427. Upon those two grounds you think that there is really a strong demand on the part of the public for reform?—Upon the first of the two, certainly.

1428. (*Chairman.*) You adhere to what you said just now, that you do not know of any inconvenience that is caused to the public by the multiplicity of Patents for trifling inventions?—I do.

1429. You do not believe that any injury arises in any way?—I do not think I should interfere with the small Patents, but let them take their own course.

1430. You think that they will mostly die a natural death?—Yes. With reference to the cost keeping back Patents I would say, that I have a list of something like 100 inventions that I should have patented 30 or 40 years ago, but for the cost.

1431. (*Lord Overstone.*) Do you think that the public have suffered an injury in consequence of those inventions not having been patented?—I think so. I think I could mention one by which many lives would have been saved if I had had a Patent for it.

1432. (*Chairman.*) You mean, that not being protected by Patents it has not been worth your while to perfect those inventions and send them out into the world?—This one is perfected, for it happens that I have a model for it. I very rarely make models, but I had one made for this. It was made many years ago. I invented it in 1830, and I mean to say, that if it had been put into practice, things would not have happened which have happened, and which have caused the loss of many lives, as connected with railways.

1433. (*Lord Overstone.*) Am I to understand from your last answer, upon the supposition that the payment with regard to a Patent was arranged according to your plan, that there are various inventions now within your knowledge which would be brought forward, but which are at present in concealment?—As far as my own inventions are concerned that is the case.

The witness withdrew.

Adjourned till Tuesday next, at half-past 4 o'clock.

Tuesday, 24th February 1863.

PRESENT :

The Right Hon. LORD STANLEY, M.P.
The Right Hon. LORD OVERSTONE.
VICE-CHANCELLOR SIR W. PAGE WOOD.
HORATIO WADDINGTON, ESQ.

W. R. GROVE, ESQ., Q.C.
W. M. HINDMARCH, ESQ., Q. C.
WILLIAM FAIRBAIRN, ESQ.

THE RIGHT HON. LORD STANLEY IN THE CHAIR.

MATTHEW CURTIS, ESQ., examined.

M. Curtis, Esq.

24 Feb. 1863.

1434. (*Chairman.*) You have had considerable experience, I think, of the working of the Patent Law?—I have.

1435. In the course of your business in Manchester?—Yes.

1436. Have you considered the question whether the cost of obtaining Letters Patent is excessive or not?—I think the present cost is not excessive. The only alteration which I would suggest would be to reduce the payment for sealing the Patent. I think it is 20*l.*, instead of which I would have it 5*l.* on obtaining provisional protection, and 10*l.* afterwards.

1437. Making it 15*l.* instead of 25*l.*?—Yes; it is 25*l.*, if I remember rightly; but, at all events, if the Patent Fund could lower it to 15*l.* for the entire charge for the first three years, that I think would be quite low enough.

1438. You may take it, I believe, that the official cost of obtaining a Patent in the first instance is now 25*l.*, and that the attendant expenses, if a Patent Agent is employed, come to about as much, making 50*l.* in all?—As a rule they do.

1439. Do you think that a reduction from 50*l.* to 40*l.* (for that would be the whole of what you propose) would make any considerable difference in the convenience to parties?—I think to some parties it would be a matter of great convenience, especially to working men, or persons of small means, who when bringing out a Patent, find it inconvenient to be called upon to pay a large sum at the first onset in addition to the cost of experiments. When a Patent has been worked for three years, if it is a matter which is worth granting a Patent for, I apprehend that in most cases the party can find some one who will be prepared to support him with the 50*l.*, and the like at the end of the seventh year with the 100*l.*; and there are advantages in favour of retaining those amounts, inasmuch as it makes the party, when he has to pay 50*l.* or 100*l.*, think whether that for which he is paying it is worth the money. It is very desirable that we should not have Patents on the books for that which is comparatively valueless; and the estimate which I should put upon a man's opinion of the value of a Patent would be whether he thought it worth his while to pay the 50*l.* or the 100*l.*

1440. Do you think that there would be any advantage in making the payment by instalments instead of as at present in one sum?—I think that it would be very objectionable, on several grounds; the first is that it would materially add to the cost; for instance, parties in Manchester, or in the provinces, have to send their Patents up to London to be stamped, for which the charge, as a rule, is three guineas, in addition to the payment of the stamp; some of the Patent agents, I believe, do it for two guineas; but generally the charge is three guineas. If there were this addition every year it would become a serious tax, besides which, the great advantage which I consider the present mode of payment possesses would be done away with; a man would say, "I will pay 5*l.*, or I will pay 10*l.*," and probably he would continue it; but I want to come to a point at which a patentee decides whether the invention is worth 50*l.* or whether it is worth 100*l.*, and if it is not worth that I think it ought to be swept off the list of Patents.

1441. (*Lord Overstone.*) Do you think that any public inconvenience now arises from the vast number of Patents which are taken out, a large portion of

which are not of long duration?—There may be some inconvenience in granting a multiplicity of them, but the difficulty is to know how to diminish the number without injuring either the public or the inventor.

1442. If you diminished the cost of first taking out a Patent, would not the effect of that necessarily be still further to increase the number taken out?—The effect might be to increase the number, but the amount which is now paid, say 25*l.*, for stamps for a Patent is so very small comparatively that I do not think you would multiply the number very much by making the amount 15*l.*; it might be so occasionally, but I think in those cases where it did occur it would be on the part of working men, who I think ought rather to be encouraged than not in endeavouring to bring matters before the public.

1443. Do you think that the encouragement ought to go so far as to incur the risk of a further increase of Patents, which are not ultimately of real value?—I do.

1444. (*Mr. Fairbairn.*) Do you think that many Patents are taken out by working men, generally speaking?—There are a great number of Patents taken out either by working men or by overlookers, the class slightly raised above them.

1445. Are you aware that there is a great inconvenience at the present moment from the number of useless and frivolous Patents which are taken out even at the price which is now charged?—There may be some inconvenience, but if a Patent is worth nothing, that is to say, if there is no merit in it, then it cannot be injurious to the public, because a Patent for that which is valueless in itself cannot stop any other party from going on with something better.

1446. If a great number of Patents which are known to be perfectly useless are taken out, do you not think that that is rather injurious to the public than otherwise?—I do not see that it does, because if a Patent is useless a man takes his Patent and pays his money, but he does not injure the public; for the public are not bound to take his invention.

1447. Does not it stand in the way of more useful Patents as an obstruction?—I hardly see that.

1448. (*Chairman.*) Have you considered the question whether there ought or ought not to be a preliminary investigation before a Patent is granted?—If you could obtain any tribunal or party where you could get really a thorough examination, I should think that it would be extremely beneficial, but the more I have considered the matter the more I am doubtful as to whether you could attain that end. I believe that in America they do profess to examine Specifications before Patents are granted, but I have been informed, and I believe it is stated on the authority of Mr. Mason, the party who conducts the Patent business in America, that they get very much in arrear, and that even then they do not consider it perfectly satisfactory. My own impression is rather in favour of granting a Patent at the option of the patentee, and all that I would do would be this: I would call upon a patentee when he sends in his claim for provisional protection to submit the matter to examiners, who should see whether that which he had inserted in the Provisional Specification accurately described what he intended his invention to be, so as to prevent his enlarging it materially when he came to his full Specification.

1449. (*Lord Overstone.*) Would you grant Patents for any subjects, however trifling and obviously un-

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important?—I am rather in favour of doing so. I think the question of utility is one which is very difficult to ascertain. I fancy that hardly any of the public perhaps look in the same light as to what is really useful; and as the public are not called upon to use an invention unless they approve of it, I do not see that the granting of a Patent does a man any great benefit, and it does not do the public any harm.

1450. (*Mr. Fairbairn.*) Then you would grant a Patent to every applicant upon that principle?—I should feel disposed to do so, as I do not see my way to a tribunal which would be perfectly satisfactory to all parties. I should rather grant the Patent at the risk of the patentee. All that I would impose upon him would be the question of the examiners, saying, "What you have put down for your provisional protection is not sufficiently definite to prevent your enlarging it when you come to your Final Specification, and we want you to make it definite and clear."

1451. You would not wish any inquiry to be made as to whether it was an original discovery or not; but if the Specification was very explicitly described, so as to convey to the public what the patentee had really taken out his Patent for; that is all you would require?—It is. The difficulty which I have with reference to the other proposition is this, that if you get a tribunal who are supposed to go through prior Specifications and prior publications, you, to a certain extent, stamp the Patent with a degree of validity, so far as the public is concerned, which certainly I have never heard anybody advocate that it should attain. For suppose my neighbour, a party I am competing with in business, has applied for a Patent for improvements in any description of machinery with which I am connected, I see the probability is that his Patent is valueless, for I have, perhaps, done the same thing myself; but perhaps it is not known generally, and it, probably, would not be known to the Commissioners, and the public would suppose that it was a valid Patent, simply from the fact of its being known that it had previously been submitted to examiners, but who in reality would have no means of knowing whether the invention was new or not.

1452. (*Mr. Grove.*) Would not the public be undeceived by finding out that many of the patented inventions, so called, turned out upon inquiry to be old; would not that induce the public to look at the matter for themselves, when it was known that the grant was really and *primâ facie* grant, subject to being subsequently invalidated if the Patent was bad?—I think ultimately it would have that effect; but then I do not see the advantage of the tribunal if the tribunal is not competent to say whether it is old or new. If you could have a tribunal who should have an opportunity of trying the validity of a Patent before it was sealed, then I think that it would do a great amount of good, but I do not see how you are to accomplish that end.

1453. (*Mr. Fairbairn.*) But if you had a tribunal of gentlemen competent to form an opinion whether a Patent was new or not, would not it be an absolute advantage to the applicant himself to show him that he was throwing away his money for no useful purpose?—There are many instances in which such a tribunal would be extremely useful. Patents are frequently taken out by working men, and they are parties whose interests you should protect as much as possible. They have not the knowledge which larger manufacturers have, and if the tribunal could do it, I would submit to it as a slight amount of benefit, though I do not think there would be the amount of benefit obtained which would be expected.

1454. (*Mr. Waddington.*) I suppose that your opinion would depend almost entirely upon the competence of the tribunal and the care with which they conducted their investigations?—It would.

1455. If they were perfectly competent, and conducted their investigations with great care and dili-

gence, is it your opinion that they might do a great deal of good?—I think that they might. I have no doubt they would do good.

1456. (*Chairman.*) Assuming that such a tribunal conducted its inquiries upon the principle of only stopping such Patents as were upon the face of them either old or worthless, leaving those that were doubtful to pass, do not you think that even in that way there would be a great diminution in the number of useless Patents taken out?—I think there would. There is no doubt, as I have said before, that where a working man applies for an improvement it is something which he in his own department has found to be valuable. He supposes his employer has the best machinery, and that he knows everything that has been done, and he goes to a Patent agent to apply for a Patent, supposing it to be new, whereas, if the Patent agent would be at a little trouble to inquire he would probably be able to tell him, "This is old," which would prevent his going on.

1457. (*Mr. Grove.*) Have you known any Patents which are known to some manufacturers in the trade to be old, but which have been run to their full length and made a source of profit to the inventor by frightening other people not acquainted with the subject?—I believe there have been such cases.

1458. How is a tradesman, for instance, who is threatened by a patentee, and who has a comparatively small interest in the manufacture, to meet the threat by a patentee in the case of an invention which he may believe to be old or not patentable, and yet which he has not sufficient interest or pecuniary means to contest?—It is one of those matters which is extremely difficult, and we want a fresh tribunal for trying Patent cases to meet that point. I may state that I have in one or two cases given 200*l.* to a party for the use of an invention in which I have told him at once that what we used was not an infringement in any shape or form, but rather than run the chance of going to a tribunal where I was fighting with a man of straw, I have consented (thinking it was prudent to do so) to pay 200*l.*

1459. (*Vice-Chancellor Wood.*) That, as I understand, was not a question of the invalidity of his Patent, but a question of your infringing it. You did not doubt the validity of his Patent?—In one case I had two grounds; the one was that I had not infringed, and the other was that I believed his Patent was invalid.

1460. Supposing a preliminary inquiry to be possible, should you think it desirable to have it *ex parte* or to allow opposition in that preliminary stage?—If you have an inquiry, I think it better to have it a public one, because then you would have this advantage, (or probably it might ultimately lead to it,) that manufacturers in the same line of business might feel it worth their while to examine what was coming out, and if they knew of a point they might, to prevent themselves being hereafter put to trouble, feel disposed to spend 5*l.*, 10*l.*, or 20*l.* in opposing it.

1461. In that case you would extend the protection of the patentee until the time for the controversy was ended, inasmuch as there could not well be a contest without disclosing what the process was?—You must extend his protection from the date at which he applied; without that you could not do it.

1462. (*Mr. Fairbairn.*) Have you known any instance of a Patent being taken out where the patentee at the same time had a knowledge that his invention was not new, and that the same thing had been done before?—I cannot say I have. I think that, generally speaking, Patents are taken out by parties who at the time believe them to be beneficial and new; but it is from want of information as to what has been already done. I do not think that many parties apply for a Patent and make a declaration that they are really new inventors when at the same time they are convinced that they are not.

1463. But there have been instances of that sort, have there not?—There may have been.

1464. (*Mr. Waddington.*) The question of novelty turns sometimes upon very nice distinctions, does it not?—It does.

1465. Unless a person were well acquainted with the principles of machinery, he might really not be able to ascertain precisely whether his supposed invention was novel or not; a working man, for instance?—There is very great difficulty in doing it; there are so many nice distinctions as to what is novelty and what is not, that it requires almost an expert to form a correct opinion.

1466. (*Chairman.*) As I understand, you do not consider that a Patent ought to be refused in any case merely on account of the apparently trifling nature of the invention for which it is claimed?—No, I do not; the difficulty which I see is of two men looking in exactly the same view as to what is useful. There are numbers of Patents which I could with a little trouble find out, which have been supposed, when granted, to be almost valueless, but which have turned out to be very profitable, while many which have been supposed to be extremely valuable have turned out to be comparative failures; and hence, a patentee himself is very often deceived in the estimation which he puts on the value of his own Patent at the commencement, and it is only by trial that he can really ascertain what is good.

1467. (*Mr. Grove.*) Do you find any defect from this circumstance. In a large manufacturing concern where there are many looms or many mules employed, the ordinary little improvements which, probably, any skilful workman would adopt from day to day as time went on, he is now practically prohibited from making, that is to say, he runs the risk in each of them, however trifling it may be, of infringing some Patent. Do you find that that in any way trammels the progress of trade, a person not being able to make any slight changes which experience indicates in working a manufacture?—That is a difficulty. Many parties in trade have made alterations without being aware of their being patented, and when they have used them for a length of time, they have found that the patentee has come upon them and made a claim for Patent right.

1468. (*Chairman.*) Then you think it comparatively immaterial how many Patents are granted, or what they are granted for, provided there is an easy way of obtaining the repeal of those which are invalid?—If you could devise any means by which the utility or the importance of a Patent could be ascertained, then it would be well to diminish the number; but failing to see a mode by which you can arrive at that distinction, I feel disposed to leave it rather to the patentee than to others.

1469. (*Lord Overstone.*) I understand your opinion to be, that nothing but subsequent experience can afford an adequate test of the utility or inutility of an invention?—That is so. I know in my own case, we have taken out a number of Patents, and frequently those to which we have attached the least importance have become the most valuable, and, on the contrary, those from which we have expected large things we have reaped comparatively no advantage.

1470. And no improvement in the constitution of the tribunal could overcome that inherent difficulty?—I do not see that it could, because when I have been looking at an invention, to consider whether it would turn out beneficial or not, and if I have been deceived in forming a correct judgment upon that point, looking at it with a view to my own information as to whether to proceed with a Patent or not, and being tolerably acquainted with the business, I think that very few other parties could be in a better position to form an opinion than I could in my own case.

1471. (*Mr. Fairbairn.*) If I understand you rightly, it would appear that any preliminary investigation might have a tendency to throw out Patents which might ultimately become useful?—That is the doubt which I have.

1472. And the difficulty would be to ascertain which was a good Patent and which was a worthless one?—Yes. Though there might be a Commission, if it was desired, for referring applicants to in the first instance; and supposing the Commissioners were unanimous in objecting to the grant of a Patent, then by giving a power of appeal to some other court, you might perhaps do it, because in ninety-nine cases out of every hundred, where the Commissioners said that they believed the invention was old or useless, I do not think the party would go on with it.

1473. (*Mr. Grove.*) There are a class of Patents, which probably you do not see much of in your own way of manufacture, namely, Patents for very trifling matters, Patent inkstands, slight improvements in bookbinding, articles of dress, and things of that sort, where the invention could never be a great one, do you think that it is desirable that Letters Patent should be granted for all those minor matters, things which, admitting everything, could be only a trifling change from the existing articles?—As I have before explained, seeing the difficulty of drawing the line as to what is really useful or not, I do not see how you are to attain to it, and I should, therefore, submit to the inconvenience, because the public are not bound to buy a Patent inkstand, or other article of a trifling character; for instance, there are Patent corkscrews with a lever; they seem very simple things; the public are not bound to use them; if they choose to use the old-fashioned corkscrew, they may do so. I think there is a Patent for a knife for opening oysters, but the public are not bound to use it.

1474. (*Chairman.*) Have you been concerned personally in Patent trials, either as defending your own Patents or attacking those of other persons?—I have in both.

1475. You have, therefore, some experience of the working of the tribunals established for that purpose?—Yes.

1476. Do you consider that they are satisfactory?—I do not. I think that the fees which are paid for Patents are sufficient to pay for the establishment of a special tribunal. I would have a Court to whom all Patent subjects should be referred. I would give no choice of leaving them, as they now are, to any of the three Courts of Law or the Court of Chancery, but I should compel all to be tried before this one tribunal. I would grant to the judge or judges, whichever might be deemed advisable, whether one or more, the assistance of two or more associates, somewhat on the plan of the Admiralty Court, where, I have been given to understand, that the Judge has the assistance of parties who are conversant with such matters. I would give the Court full power to order inspections of machinery, whether it was for the plaintiff or for the defendant; in fact, I should like the Court to be one which would have full power to make rules, so as to guide the Court as much as possible in arriving at a correct conclusion with the least possible expense. At the present period, parties are sometimes compelled to be at great expense in proving that a machine has been made, when it is well known that parties have made it; but you are compelled to bring witnesses up to prove the fact, and as soon as you have got into Court, and have got a witness to prove it, the other side will at once admit it has been made by them. Now, I think that the Court ought to be able to reduce the matter in that way as much as possible, so as to prevent either plaintiff or defendant from snatching a verdict, and to enable the Court to try, as fully as it can, the real merits of the case. I should like the plaintiff, the patentee, when he delivers his particulars of breaches, to state either the particular claim or the particular part of his Specification which he considers is infringed, so that the defendant may have as little trouble in searching the Specification over as is compatible with ascertaining the true nature of the case. On the other hand, I would have the defendant, when he gives in his notices of objections of prior use and of former Specifications, to point out the

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particular part of such Specification that he relies upon, coupled with the particular part of the patentee's Specification which he intends it to apply to. At the present period, the defendant probably puts in some half dozen Specifications; he does not state what part the matter is intended to be applied to, and the consequence is that the plaintiff has to be at great expense either in employing experts, as they are usually termed, or else himself, or to get others to search out to see what portion of the Patent it really can be which the defendant is attacking. There is no clue to show which claim is intended to be attacked, or what it is. Now, I think there ought not to be that useless trouble put upon either plaintiff or defendant.

1477. (*Mr. Grove.*) You may, perhaps, not be aware of it in cases in which you are concerned, but that is now done. By reference to a Judge at Chambers, the patentee is frequently obliged to point out the portion of the Specification which he says is infringed, and conversely the defendant is obliged to point out in his notices of objection what part he relies on. It is done constantly; I do not know that any great good arises from it?—One can get it done in that way. In a case in which I am now engaged, we have had to come before the Court to get these particulars, and it is attended with a great amount of trouble and expense, getting parties to come up to London and attend the Judge at Chambers. The Judge at Chambers, as a rule, has, perhaps, some 20, 30, or 40 subjects to dispose of; he has an hour or a couple of hours at his disposal, and the natural consequence is that he can hardly be supposed to be capable of doing full justice to these matters; but if you had a special tribunal, the Judge and the associates who were with him specially directing their attention to making rules for a particular object, every plaintiff and every defendant would know that he was bound to do it, and instead of asking a Judge at Chambers to do it, it would be done at once as a matter of course, and if not done, the Court might impose a penalty.

1478. (*Mr. Fairbairn.*) If I understand you correctly, your opinion would be in favour of having a perfectly distinct tribunal, which should do nothing else but attend to the Patent Law?—Yes. Mr. Grove will well know that Patent cases are considered by many of the Law Courts to be rather a nuisance than otherwise. I think I have heard some of the learned Judges say, "These cases are taking up a great deal of time, obstructing the public business," and they are liable to get a little impatient with the matter. The advantage of a special tribunal would be this, that you would get a Judge whose mind being specially drawn to that particular branch of the profession, he would necessarily acquire great knowledge of the subject, and ultimately would get accustomed to master many difficult points. It is wonderful that the Judges, from having a case now and a case then, are able to master the points in the manner in which they do. I think extreme credit is due to the Judges for the patience with which they undertake and the manner in which they get through them; still, if you had one Judge giving his mind to one class of business, I think you would find an advantage, same as we do in our business; the subdivision of labour is a great advantage which this country possesses over the continent.

1479. (*Lord Overstone.*) In constituting such a Court, would you retain the jury as a part of the system of trial or would you suppress them?—I think I should retain the jury.

1480. In what character would you propose to introduce the advisers or assessors which you speak of, simply as persons giving useful information and advice to the Judge, or as exercising any share of the authority?—In giving assistance to the Judge and in mastering technicalities.

1481. As parties with peculiar knowledge competent to give information to the Judge upon his request to be furnished with it?—Yes.

1482. (*Mr. Fairbairn.*) But it very often happens that the jury are not competent or not conversant with the subject which comes before them?—That is the difficulty, and it might be said to be an objection to appointing such a tribunal as this, that you would bring a class of business to one particular district; supposing it London, perhaps the jurors might feel disposed to think they were unnecessarily trespassed upon by having the business of the whole country brought for them to try.

1483. (*Mr. Grove.*) You need not confine your tribunal, if you had one, absolutely to London; the judges of such a tribunal might make a circuit amongst the manufacturing towns, Manchester, Leeds, and some other towns?—If they could do that it would be a beneficial result, because it would save expense in bringing witnesses.

1484. (*Mr. Hindmarch.*) Looking to the nature of the inventions which are mostly patented in the present day, do you think a jury a good tribunal for deciding questions, either of novelty or of infringement, with respect to such matters?—There are many cases tried in which the jury are quite incapable, excepting under the direction of the Judge, of giving an opinion, and in that respect it is unsatisfactory.

1485. If that be so do they really exercise an opinion; is it not rather the opinion of the Judge which determines the question?—I think it is.

1486. If that be so do you think that a jury is at all a useful appendage to the trial of a cause?—That the jurors very often mislead the parties, there is no doubt.

1487. You yourself, I believe, have seen a good deal of Patent litigation?—I have.

1488. Have you not found that jurors are apt to be misled by matters of prejudice, and induced to decide the question before them by matters of prejudice rather than upon the true facts of the case?—There is no doubt that that is so, and it is only by the appeal which you afterwards have that it is remedied. If you could get a Court consisting of five parties, namely, one Judge or two Judges, and three or four parties who were competent to form an opinion, I think you would most probably arrive at a better conclusion than you do with an ordinary jury.

1489. (*Vice-Chancellor Wood.*) There has been a suggestion of a panel of scientific men, sufficiently large to choose from time to time some five or six, or whatever number might be determined upon, or some say three, as a jury; would a scheme of that kind be desirable in your opinion?—I would rather not have a panel from which you would take them, but would rather have four associates with the Judge, and let the Judge and the associates decide the question.

1490. You would let them act as a jury?—Yes.

1491. (*Mr. Fairbairn.*) And you would dispense with the jury altogether?—Yes.

1492. (*Mr. Grove.*) If they acted as a jury, that is to say, if they give a verdict on the facts, you would have a fixed tribunal, which the parties could not challenge, and if the public rightly or wrongly suspected them of any bias or interest, you would not have the usual means of challenge?—If the Court or the Judge is suspected of that I do not see why you should not have a power of appeal on points of law, which might be reserved; you would have the same power of appeal that you have at present in the other Courts.

1493. So far as regarded the points of law there would be no difficulty; that would be entirely a legal question, but as to the decisions of fact, supposing that of the three or four permanent assessors some were believed to entertain (it may be wrongly) very particular and strong views on certain subjects, if they were to act in the capacity of a jury would the public be satisfied with that?—If parties had strong opinions, and were known to have them, whether for patentees or against them, I think that would be a very improper tribunal to have, and the

sooner they were removed from their position the better ; but in selecting four or five associates with the Judge, I should presume that they would give an honest exposition of the views as laid down ; and that they were not to be favourable to a patentee or against him, simply as a question of favouring him or being against him.

1494. Would you give to these persons, whom you would have as a sort of jury, salaries, and remove them altogether from any manufacturing or engineering or trade practice of any description ?—Certainly.

1495. You would make them a permanent jury, in fact ?—I should not exactly put them in the character of a jury, although in reality it would come to that, but rather in the character of associates. I would give them not so large a salary as the Judge, but certainly pretty nearly as large an one, so that you might ensure sufficient talent.

1496. Would you give them an absolute voice in the shape of finding a verdict, or would you make them merely advisers to the Judge, the decision resting with the Judge. I am presuming that you would give the Judge the entire ruling in point of law ?—Yes.

1497. Would you give the jury a voice as a verdict in point of fact, or would you have them as mere scientific advisers to give their opinions to the Judge, he pronouncing the decision ?—I apprehend practically, however you put it, it would arrive at that. Supposing there were four parties to assist, if two of them were one way and two the other, the Judge would have to decide the matter.

1498. Suppose that they were unanimous in their opinion, and that the Judge differed from them ?—Then I apprehend that there would be a power of appeal, the same as you have now from the finding of a jury. You have the power of appeal, and of saying that the verdict was against evidence. In this case, the appeal would be that the verdict was against the evidence. That is to say, the verdict would have been the verdict of the associates, or of the Judge and the associates, and it would be as against them.

1499. (*Mr. Hindmarch.*) If you had a permanent list of persons to be employed in this way, bearing in mind the great number and the great variety of the manufactures of this country, would it not be necessary to have a very extensive list of persons ?—I would myself rather take the ordinary jurors than a selected list of jurors in the same business, because if a man is in business he is likely to be biassed. I will put it that I am a machine maker, a maker of mules or of earding machines ; if I was put into the jury box it would be difficult to sever from my correct judgment a slight bias. There would be a great danger of my giving a voice against the Patent rather than for it, supposing it to be a doubtful point, if I thought it would interfere with my own business. I think that you would be putting parties in a wrong position, making them, as it were, judges in their own case.

1500. Would you say that there is something like an *esprit de corps* which seems to prevail in every class of manufacturers and tradesmen, so that you think it is desirable to avoid giving them a voice in the decision ?—I do not think there is any particular feeling of that kind. I think it must be taken as an individual feeling ; that is to say, that if my fellow competitor has something which is better than I have, we naturally think he has a slight advantage ; and if we are put to judge as to whether it is new or whether it is old, if there is a doubt in the case, you are putting our honesty of opinion to rather too strong a test ; it might be biassed, though we desired to give a correct and unbiassed decision. I hope that none of us would willingly give a verdict as against our convictions ; but supposing it was a dubious point, upon which it might be said the right or the left hand has it, I am afraid we might be biassed by our own interests in deciding, and if not, still the jury might be suspected of having been so.

1501. (*Mr. Fairbairn.*) With such a tribunal as

you describe, the assessors or associates would have to exercise all the functions of a jury ?—Yes.

1502. And they would be responsible for the verdict whatever it might be, as well as the Judge ?—Yes ; I would say that if any four gentlemen now present were put where they were considered to be paid for a specific duty, I think they would be so amenable to the public voice and to public opinion that they would at all events endeavour honestly to discharge the duties of their office.

1503. It is also your opinion, I suppose, that any tribunal of this sort where there would be assessors and a Judge having that exclusive business to attend to would attain a greater perfection than you could possibly get in ordinary Courts ?—Yes.

1504. (*Mr. Hindmarch.*) With reference to the constitution of a tribunal of this sort, have you had anything to do with the cognate matters, registrations of designs, having reference to the purpose of utility ?—No, I have not.

1505. You have not any opinion as to whether questions concerning them might also be transferred to such a Court as you speak of ?—If you ask my opinion I think that they might.

1506. (*Lord Overstone.*) The course of examination seems insensibly to have led you away from the opinion which you originally expressed in favour of retaining the jury as a part of the system of trial ?—I had not considered the matter before as to the question of assistance in that respect, it was rather raised as to the difficulty of obtaining a jury, and I only spoke of a jury from its having been established in the country generally. As Englishmen we are perhaps rather fond of trial by jury, but there are certain difficulties which I think all have experienced who have had any connexion with it.

1507. After the examination which has now occurred, is it or is it not your opinion that we could safely withdraw the trial of Patent causes from the tribunal of a jury as a means of obtaining the influence of the common sense and the common feelings of the community to act in co-operation with the more experienced learning of a Judge ?—I think you might, with the assistance which I have indicated.

1508. You think that with assessors, properly selected, the present security or advantage which we are conceived to derive from a jury might be surrendered ?—I do ; there is another point upon which I wish to make an observation. I think a patentee ought, to a certain extent, to be put under terms, and that no patentee should lie by waiting for the public to use his invention and then come upon them after a lapse of time for damages without having given to the public or any party the slightest intimation. According to the present plan, a party can sleep, if I may so call it, on his Patent ; he can allow the thing to go on and he can go back for six years for damages. Now I think if a patentee gives no notice to the public he ought certainly to be debarred from going back for any great length of time.

1509. (*Chairman.*) But how can you prove that he has been aware that his Patent was being infringed, in what form should you say that he ought to give notice to the public ?—For instance, I will take my own business. Suppose I am a maker of mules, and that A. has a Patent for a mule, which he believes me to be infringing, but abstains from giving me or the users any intimation thereof ; if I make those mules openly, and sell them openly in the market, and there is no notice taken of them, I do not think I ought to be liable to his going back certainly more than two or three years, and I think a patentee, if he is not sufficiently alive to or aware of the fact, ought not to have the power of doing it. If a man carries on his business in secret, that is to say, if a patentee has an invention which is so small that a man may carry it on secretly, then I would give him the full power of going back for the six years. But I mean to say, if I am the maker of a machine, and sell the machines openly, and they are used openly by the trade without any reserve or restriction at all, I

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think then you ought to limit the period to some two or three years, in respect of which the patentee should have the power of claiming damages. I think he is bound to exercise some diligence himself in ascertaining whether his Patent is being infringed or not, and that he ought not to let the matter lie by.

1510. (*Mr. Hindmarch.*) You would in truth then have a limitation to the right of action amounting to two or three years?—Yes.

1511. (*Mr. Grove.*) That is to say, a limitation to damages or account?—Yes. Supposing I have obtained a Patent, and have not the means perhaps of contesting it, if I give notice to A. or B. that I consider he is infringing my Patent, and state what it is, then I would allow my right to go on for say five years instead of six, it is questionable whether you ought not to limit it to four years under any circumstances, because if a man cannot ascertain whether his Patent is being infringed or not, I think the other party ought hardly to be put under the terms.

1512. (*Lord Overstone.*) You say that the right of recurrence for six years ought to be retained in case the Patent has been secretly used?—Yes, then I think it might be done.

1513. But not in case it has been publicly used?—Just so.

1514. What possibility would there be of drawing that distinction; how would that distinction be set forth?—In this way. If I am a patentee, and another party makes my patented articles, and carries on that business secretly, or carries it on in his own place, then I think the probability is that it would be found to be a secret user. But I am now assuming the case of a manufacturer, who is making large quantities of machines, and disposes of them, and the party who buys them uses them, and all is done openly and extensively, then I should say it was a public user.

1515. (*Mr. Hindmarch.*) Are there not a great many articles made by means of inventions, the articles themselves not disclosing the make of manufacture?—I apprehend that that would not be any infringement of the Patent. The article that is made, I apprehend, is not the use of the invention.

1516. Are there not many cases in which there are new processes for making old articles, or articles of an old description, which might be made and sold by a person and still the process would be secret, or at least it might not be public; how would you deal with such a case as that?—I do not exactly understand the point alluded to.

1517. You have said, in answer to a question of one of the Commissioners, that if the use of a particular article was public for some time, and all the world could see it, in the case of the machine which you have put, no person, after lying by for some time, should be able to recover damages for an infringement of his Patent; but in a case of that sort, if I understand it rightly, the machine itself would disclose how far it was or was not an infringement of the Patent. Then I put to you a case in which an article is sold which does not disclose upon the face of it that it is an infringement of any Patent, it being made by a process which is not apparent on the face of it. I ask what you would do in a case of that sort?—I understand, from what I have had to do with the Patent Laws, that, supposing you take out a Patent for an improvement in making, say an inkstand, the invention is in the making of it, and that when made of course you would see at once whether it contained the essence of the Patent or not; but you do not take out a Patent and say, "This string is produced by a 'patent process.'" Supposing it was made by a machine, I apprehend the Patent must be for the particular mode of making it in the machine, and not for the article when made. That is what I understand.

1518. (*Vice-Chancellor Wood.*) Then you would confine the publicity to this, that the actually patented article had been publicly sold, and in that case you

think that the damages ought not to be recovered?—If it is sold in the ordinary way of business I think they should not be, for I think there is no patentee but who is aware, before three years elapse, whether parties are infringing his Patent or not, and if he does not choose to exercise his right, or to give some notice to the party that he is doing it, who may all the while be infringing the Patent without any knowledge whatever on the subject, then I certainly think he ought not to have a right of action.

1519. (*Mr. Hindmarch.*) Supposing a patentee to be living in France, and a person in Limerick to be infringing his Patent, might not that go on for a considerable period without the patentee knowing anything about it?—There is no doubt there might be hardships in it. But I do not want to look in my own case as a patentee for my own particular benefit. The public have a right to some amount of protection.

1520. (*Vice-Chancellor Wood.*) Would it not come to this, looking to the difficulties of seeing whether or not a person has done it secretly, that your only mode of effecting the object would be to have a shorter Statute of Limitations altogether, whether the thing was secret or not secret. It seems excessively difficult to draw the line?—There might be a difficulty, but if you had such a tribunal as I allude to, I think the Court would very soon be in a position to say whether the matter had been carried on secretly or not; and where a party could prove, to the satisfaction of the Court, that he had carried it on openly, I think he should only be liable to three years' damages.

1521. (*Mr. Hindmarch.*) Would not the object which you have just mentioned be sufficiently carried out by providing that the new Court which you suggest should have the power of determining whether or not a patentee, by his conduct, had disentitled himself to an account of bygone profits?—That is what I virtually wish to arrive at. Then there is another point. I will say a patentee comes against me individually, he claims from me an account of profits for making the machine; it is decided against him, at all events to a certain stage, he then comes or proposes to come against parties who have been using the machine I have made and for which he has come upon me. Now I think there ought to be some distinct rule laid down that no patentee ought to come for two questions of Patent right for the same thing. If he chooses to come to me as maker for damages, that when settled ought to settle the question so far as regards those machines.

1522. (*Mr. Fairbairn.*) Would you give a patentee the power to come either upon the maker of the machine or the user of the machine?—It is considered now that he has the power of doing so, but I have been informed that it has never yet been fairly tested in any court of justice, whether a man who uses a Patent machine is an infringer. For instance, take the self-acting mule; suppose I have made a Patent mule, there has been no decision that a party who has used that mule when so made has been an infringer.

1523. (*Mr. Hindmarch.*) At all events, if I understand you rightly, you propose that there should be a limitation of the right to recover damages, that it should not be both against the maker of the machine and the person who afterwards used it?—Certainly.

1524. (*Mr. Fairbairn.*) I can very easily conceive the case of a Patent mule where the machine maker knows that it is a Patent, and has made the machine, and the other party using it does not know that such a Patent exists at all; but if the patentee had not the power of coming upon a man who used a Patent article, knowing it to be such, it would alter the case very materially would it not?—If the patentee has now the power of coming against either the maker or the user then I would limit it to one, giving him his option, but I would not let him proceed first against the maker and then against the user for the same thing, when he has already obtained damages.

1525. But when a person is using a machine which he knows to be patented, he must expect to be called

up by the patentee whenever he chooses, must he not?—I believe so; but I believe that it has never been decided.

1526. Is a person in his position justified in making use of a Patent, knowing that it is a Patent, without coming to terms with the patentee?—If the law is undecided on the point he is. He takes his chance.

1527. (*Chairman.*) Is there anything else which you would wish to add to the evidence which you have given?—With reference to the 6th question, namely, as to greater facilities being provided for the repeal of invalid Patents, I think great facilities should be given by which parties might be in a position to give evidence of the invalidity of a Patent at the least possible cost. Supposing a patentee has brought an action, and the Court has decided that the thing is old, then I think instead of being at the expense of issuing out a writ of *scire facias* against him, the Court ought to be at liberty at once to cancel the Patent. But supposing a patentee whose Patent was declared to be invalid, gave notice of appeal, and prosecuted such appeal until that appeal was settled, I would not repeal his Patent. But full power and every assistance ought to be given to the public to repeal invalid Patents. With respect to a Court of Appeal, I should only have one Court of Appeal from the Special Court. As to the form of it, I think the Court might have the assistance of some of the Judges of the other Courts, same as the Court of Divorce. There is one point, with reference to the Provisional Specification, which I should like see provided for. At the present period it is a moot point (at least I have heard differences of opinion between counsel and Patent agents, and others,) with regard to the Final Specification. A party applies for three distinct things, and when he is making his Final Specification he finds that one of the three has been previously used, that it is old. In many Patents you find it stated, "since the taking out of my Patent I find that the second" or third "part has been previously used, and I therefore make no claim for it." Now it should be understood that a patentee has the power of doing that. But I have heard some parties state that you must go to the Attorney General; that you must apply for leave to disclaim; that it would be a fraud on the Crown to claim only for two instead of three things. It ought to be clearly understood that during the six months in which a patentee has to complete his Specification, if he finds a part of his Patent is old, he should have the power of disclaiming any portion of it which he finds to be old. And that would apply to a certain extent, I think, to question No. 12. I would give every facility to a patentee to make any alteration in the shape of Disclaimer or Memorandum of Alteration which he found was requisite. I do not see why we should have to give notice in the papers, and go before the Attorney General, and otherwise. If he gives up a portion of that which the Crown is supposed to have given him in the shape of an exclusive right, I think he ought to be at perfect liberty to give it up at any time, without any extra expense; and the only restriction which I should put upon him would be this, that supposing he altered his Specification, and that alteration was virtually an enlargement of his claim or of his Specification, the Court, when they came to take cognizance of it at the trial, might say "It is true you have disclaimed, but it is not a valid Disclaimer."

1528. (*Mr. Hindmarch.*) The policy of the law at present is that the Attorney General shall look at the proposed Disclaimer and see whether it will in effect, if allowed, extend the Patent right, and you say that that is an unnecessary safeguard to the public; am I to understand you to go so far as that?—No; I do not say it is an unnecessary safeguard to the public, but it is unsatisfactory. The practice is this:—The Attorney General causes you to advertise in the "Gazette" and the London "Times," and several other papers, before he will grant it, and when granted it is not conclusive. If the Attorney or Solicitor General had finally to decide whether it

was an enlargement or not, there could be no objection, but at present it is an extra expense which you are put to for that which practically amounts to nothing.

1529. An Attorney General may not be acquainted with the particular description of trade, or there may be terms of art in the Specification which he may not thoroughly comprehend,—he calls the public to come in to his aid if they think fit so to do; do you not think that a proper and expedient and necessary thing to do?—I do not. As far as regards the question, I would, as I said before, let a patentee have the power of giving up at any time any portion of that for which the Crown has given him an exclusive privilege, and when he has done that, and when he has altered his Specification, he should be just as amenable to the Court who try Patent cases as he is now, because, as Mr. Grove will remember, in a case in which we were, there were doubts thrown out as to whether it was a Disclaimer which ought to have been allowed, and there was a question whether that should not be tried; you have no exclusive right (as I understood in that particular case) when the Attorney General has sanctioned the Disclaimer to say that it is *ipso facto* valid; it is liable to be called to account before a Court. Therefore, if, when you have taken the precaution of the Attorney or Solicitor General giving his opinion, and if his decision is liable to be called in question before a Court, surely you may leave it to the patentee to do it, and be liable to the same. Another reason why the responsibility should be left with the patentee is that it is impossible for the Attorney or Solicitor General to have time to go through and examine the multitude of provisional protections which are demanded, and also to go through all these questions of Disclaimers along with their other business; it is impossible they can do thorough justice to every case.

1530. (*Mr. Grove.*) If you allowed the patentee to do it by himself, might he not be everlastingly shifting his invention about right and left without the public knowing what he really meant by his Specification; without any controlling power, a patentee might vary his Specification continually, and the only mode of ascertaining whether he has done it legally or not is by trying an action?—There is no varying, but only giving up a certain portion.

1531. But by giving up you may vary continually, as in a certain case the patentee was said to have extended the Patent by the apparent contraction?—Taking that particular case (I do not know what it is) if the Disclaimer had been allowed before the Attorney General or the tribunal, and it had passed them and had then been called into question, what would be the harm as to whether it was the patentee's disclaiming or the patentee's disclaiming subject to the Attorney General's approval, because if when the Attorney General has approved of it it is open to the Court to say he has done wrong, I do not see any advantage to either the public or the patentee in being called upon to submit the point to the Attorney General for decision.

1532. (*Mr. Hindmarch.*) Does what you have said virtually come to this; at present the power to disclaim is to disclaim a part of the Specification or title, and not the invention; do you mean that a power might be given to disclaim not merely the words of the Specification, but to disclaim so much of the invention as the party chose to give up?—I apprehend the power now is to give up any portion of the Patent which he possesses, and if that relates to two or three subject matters he would give up that portion of his invention as well. It applies not merely to a particular claim, but it applies to a particular machine where you see more than one invention in the same Patent.

1533. (*Mr. Fairbairn.*) Am I to understand that the patentee, having had four or six months to amend his Specification, and to do everything necessary to be done with it, you would allow him after that period to cut off any part of his Patent if he chose to

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do so?—Yes; it is now allowed by going before the Attorney General, but you subject a patentee to the expense of all these advertisements, and of going before the Attorney General, and appearing by an agent in London, and I think you ought to curtail all useless expense.

1534. (*Vice-Chancellor Wood.*) As far as advertisements are concerned, I suppose that it would meet your views, if that is necessary for publicity, that it should be done without consulting the Attorney General, if that is thought desirable?—Yes, if that is deemed desirable, and it is any protection to the public. I never knew an instance in which a party had applied for a disclaimer which was advertised in the "Gazette," and in other places where the public, unless it was some particular individual, felt it worth their while to appear before the Attorney General and to say, "This Disclaimer ought not to be granted."

1535. But if it is necessary to put the public on their guard, it would be sufficient for the patentee to state, "I hereby advertise that I intend on such a day to disclaim"?—Yes.

1536. There ought to be some public notice, otherwise a Specification which is enrolled in the Patent Office will be deceiving everybody?—The matter must be formally delivered to the Patent Office; it

must go through the regular Courts, and it would be enrolled and printed in the Patent Office with all the other proceedings.

1537. The patentee would be obliged to employ a Patent Agent for that?—No doubt he would.

1538. (*Chairman.*) Have you formed any opinion upon the question of compulsory licences?—So far as regards licences, I do not see how granting a compulsory licence is to be settled.

1539. What is your opinion with respect to granting Patents to importers of foreign inventions?—I should grant Patents to importers of foreign inventions, or parties residing abroad.

1540. (*Vice-Chancellor Wood.*) Would you give merely the importer of an invention a Patent if the importer of a foreign invention be a person merely travelling in France or Italy, and finding something new, and bringing it over?—I think it ought to be confined to the inventor, or a party acting for him.

1541. (*Chairman.*) With regard to prolongations and confirmations, have you any remark to make?—No. I am satisfied with the present appeal to the Privy Council. If there could be any means by which the expense could be a little curtailed it would be beneficial to parties; but as a whole I have never heard any complaints against that tribunal.

The witness withdrew.

Adjourned to Thursday next at half-past 4 o'clock.

Thursday, 26th February 1863.

PRESENT :

The Right Hon. LORD STANLEY, M.P.
The Right Hon. LORD OVERSTONE.
The Right Hon. SIR WILLIAM ERLE.
HORATIO WADDINGTON, ESQ.

W. R. GROVE, ESQ., Q.C.
W. M. HINDMARCH, ESQ., Q.C.
W. E. FORSTER, ESQ., M.P.
WILLIAM FAIRBAIRN, ESQ.

THE RIGHT HON. LORD STANLEY IN THE CHAIR.

SIR FRANCIS CROSSLEY, Bart., M.P., examined.

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1542. (*Chairman.*) You have had a large experience, I think, of the working of the Patent Law?—Yes, I think that I have.

1543. Both in defending Patents on your own account and probably in resisting Patent claims on the part of others?—Yes.

1544. You are actually in possession of a considerable number of Patents, I think?—Yes; the firm with which I am connected is.

1545. Have you considered the question of the cost of obtaining Letters Patent, whether it is too great or too small?—I think that the alteration which was made was very satisfactory both to the Patentee and to all parties concerned; before that the cost was excessive.

1546. You allude to the alteration which was made ten years ago?—Yes. We find now that a great number of the Patents which are taken out lapse at three years and seven years. Patents which we have taken out ourselves we have allowed to lapse finding that they were not so good as we at first anticipated, that the benefits arising from them were not so great.

1547. It has been suggested that it would be better to have the payment made by annual instalments rather than as at present at intervals considerably longer, do you think that there is anything in that proposition?—It is a matter of not much consequence, I think, whether it be at intervals of three or seven years or annually. The payments which are made on the Continent both in France and in Belgium and in other countries, so far as I remember, are all annual payments. I myself think that the English Law, since it was altered with regard to the obtaining of Patents, has worked very well.

1548. You think generally that the Law so far as it relates to the cost of Patents is satisfactory?—I do.

1549. Have you considered the question whether there ought to be a preliminary inquiry before the granting of Patents in order to prevent a multiplication of useless or frivolous Patents?—I think that it would be very difficult for any one appointed by the Government to decide what is a frivolous Patent. I believe that a Patent was taken out for simply putting india-rubber at the end of a glove so as to make it tight round the wrist; that might have been considered a frivolous Patent, but I believe that it was thought to be a very good one in the trade and it was new and useful. I think that it would be rather difficult to draw the line. I cannot see my way to it.

1550. Do you think that the present inquiry before the Law Officers is sufficient?—So far as my own experience goes it is; there may have been things which have occurred in other trades which have been objectionable, but they have not come within my knowledge.

1551. (*Lord Overstone.*) Guiding your general judgment by your personal experience, though limited, is the result in favour of retaining the present arrangement, or do you think that it requires any reform?—I should be afraid to alter the present arrangement. I should be afraid of getting into larger difficulties than we have now.

1552. (*Chairman.*) You think that it would be impossible to exclude Patents which either are not original, or are of no value, without running the risk of excluding others which might be of real value although they would not appear so at the time?—I certainly would give the Law Officers, or whoever had the power of granting them, the power of refusing something which really upon the face of it was ridiculous and not at all likely to be useful.

1553. (*Lord Overstone.*) Do you think that their present power as practically exerted ought to be in-

creased or to be rendered more efficient in its operations?—I am not quite aware of the present law in that respect, whether they have the power to refuse or not. I believe that they have the power to refuse, but I am not quite certain on that point; if they have not I should certainly give them the power to refuse something which was absurd or ridiculous.

1554. (*Mr. Fairbairn.*) Have you anything to suggest with regard to rendering the Specification more distinct and clear on applying for a Patent, or do you think that that would remedy the evil to a certain extent?—I think that they ought to insist upon the Provisional Specification, the deposit paper, as it is generally called, being clear and showing what the intention of the inventor is, as to what it is that he is asking a Patent for. I think that that ought to be very clearly defined.

1555. (*Lord Overstone.*) You say that you think that the Law Officers of the Crown ought to exercise a power of refusing applications for Patents upon the ground of their being ridiculous or absurd. Would there not be danger that such a power might be exercised in the very case which you have put, of the bands of gloves?—I think that in that case the inventor would be able to show that it was useful.

1556. You think that the Law Officers of the Crown could be safely entrusted with a discretionary power of deciding what is useful or what is not useful, what is serious or what is ridiculous?—I do.

1557. (*Mr. Fairbairn.*) Do you think that that would be an improvement?—I have already said that I do not know what the present power of the Law Officers of the Crown is; but I think that they ought to have that power if they have not it now.

1558. You think that they should have discretionary power to reject any Patent which upon the face of it was never likely to be useful at all?—Yes; I would leave them that power with perfect safety; they are men of good common sense, or they could not have attained the position which they hold, and I think that they would not refuse a Patent if the inventor could show that it was useful.

1559. To arrive at that decision it would be necessary to have some person to examine and investigate the nature and the quality of the Patent which was sought for?—Yes.

1560. That would be a preliminary investigation of the Patent itself?—Yes. Afterwards, when we come to the questions with regard to the trying of Patents, I shall have some suggestions to make, and perhaps it might be thought that the same body would be the proper party to make that examination.

1561. (*Lord Overstone.*) Do you think that that decision of the Law Officers of the Crown should be founded upon an *ex parte* view of the case?—I am not sure that the Law Officers of the Crown would be the best parties. I think that perhaps the other tribunal, of which I shall speak by and by, may be a better one.

1562. (*Chairman.*) Do you think that it would be convenient to have the question of the first granting of Patents, decided by the same authority which has to decide upon the validity of a Patent when granted?—I think that that would be the best.

1563. Do you think that the manner in which actions and suits instituted by Patentees are at present tried, is satisfactory?—It is most unsatisfactory.

1564. In what respect?—The great delay in the first place in getting a cause heard is very serious; there is very great difficulty in getting it tried, and the witnesses are very expensive; and when it is called on in Court, you almost always find that the Judge shirks it, he does not like to try a Patent cause; he appeals to the jury whether they think they can be made to understand this difficult and complicated question, and they almost unanimously say that they cannot understand it, and they wish it to be referred. Then if the plaintiff is against its being referred, he has to go on with both Judge and jury against him, and is thought to be a very stupid man if he will not

allow it to be referred; and *vice versa* if the defendant will not have it referred, he goes on under very disadvantageous circumstances; and when it is referred they must select as the arbitrator some counsel who has some position, and, of course, counsel of that class are very much engaged, they will not give up the time which is likely to be wanted in Court for other cases, they will not sacrifice their own professional business for it; and when the recess comes they say that they want their holiday like other people; they do not like to be taken away for arbitration cases. And the remarks which I have made with regard to the barrister appointed to try the case applies to the barristers engaged on each side. It is very important that a Patent cause should be proceeded with every day until it is completed, and not that a little evidence should be taken one day and a little another, because, let a man be ever so clever, when he has heard a portion of the case, and he is employed in other cases, he forgets what he has heard, and by taking it up in fragments, in that way, it is impossible to get justice done to either side. I think that anything more unsatisfactory than the present way of trying Patent causes in this country it is impossible to have. With regard to leaving the question to a jury, I do not think it is possible for a jury, taken promiscuously in the way they are, sitting in a box looking at delicate machinery at some distance off, to understand the nicety of movements which it is requisite for them to understand, in order to see whether the justice of the case rests with the plaintiff or with the defendant. They ought to be able to go and see the thing working, and to turn it round themselves, and see where the operation is from first to last, before they can thoroughly understand it. Too much now depends upon the ability of the advocate, as to which of the advocates can throw most dust in the eyes of the jury.

1565. It may be that you would have a question involving most complicated points of machinery decided by a Jury no one of whom has seen a machine of any kind at work?—That is so.

1566. And probably all parties concerned, the Judge, the jury, and the counsel on both sides, have acquired what knowledge they possess of the subject solely for that occasion?—Yes.

1567. I need not ask you whether you consider that a satisfactory state of things?—I consider it most unsatisfactory. I think that if we could have such an alteration made in the way of trying Patent causes as was made when the question was under consideration before with regard to the obtaining of Patents, we should come as near perfection as possible.

1568. Would you have a special Court constituted for the purpose?—Yes, I think that there ought to be a special Court—a Judge appointed who has capabilities for understanding machinery and chemistry; and I think that he ought to be assisted by two experts who should give their whole attention to it, and that one of the experts ought to be celebrated for understanding machinery thoroughly, and the other chemistry, and that both ought to know something of the whole; but still, I think, that they ought to be selected from the first men who could be found, and that they ought not to be allowed to practise on their own account.

1569. Would you have a jury with them or not?—I would have no jury.

1570. Would you have them only advising the Judge, and allow the responsibility of the decision to rest with the Judge solely, or would you give them a concurrent power with the Judge?—I think that the opinion of the majority of the three ought to be the decision.

1571. You think it better that they should be men permanently employed for that duty, than that the Judge should have the option of summoning to his assistance for the case such persons as he might think fit?—Yes, I do; because there are so few experts in this country who are celebrated, and I think that there would be a difficulty in the Judge summoning any one who had not been employed by the plaintiff or the

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defendant. I think that you would get a more disinterested and impartial judgment if their entire time was given to the duty. Besides that, if there was only one Court, I think that there would be employment sufficient.

1572. Would there not be a difficulty from the fact that a person engaged in that duty, and having nothing else to do, would soon lose his acquaintance with the new scientific processes which were going on, and would very soon be behind his time as regards matters of scientific improvement?—There would be that danger, unless they spent some time in looking up new inventions, and keeping themselves acquainted with what was going on.

1573. What would be their inducement to do that if they were employed for this duty solely, and were not allowed to engage in anything else?—That is a difficulty, I must admit.

1574. (*Lord Overstone.*) Is it not a difficulty somewhat similar to that of a Judge who feels himself obliged continually to keep up his knowledge of law?—I think that the cases which would come before them in Court would keep them informed upon what was going on, because it is always the most valuable inventions which are pirated. You may take out 100 Patents which are worth nothing, and nobody will copy them; but if you take out one good one, there is sure to be somebody imitating it, and coming, as the Patentee will consider, too close, and that is the case which they would have to try; and I think that these cases continually coming on in Court would keep those persons well posted up as to what was being done in new inventions.

1575. (*Mr. Fairbairn.*) If I understand you correctly, you propose that there should be a Judge and two Assessors, a mechanic and a chemist?—Yes; but both the mechanic and the chemist ought to know something of the other branch as well.

1576. You mean that both should have a general knowledge both of mechanics and of chemistry?—Yes.

1577. Have you considered how such a tribunal would work under these circumstances; whether the decision should be by the Judge alone or by all the three?—My impression was to leave it with the Judge, but still I think that the Judge ought to be influenced very much by the opinion of his assistants.

1578. That they should advise the Judge?—Yes. I am rather inclined to let the responsibility rest with the Judge.

1579. Suppose that the Judge took altogether a different view of the subject from that taken by the parties who assisted him?—That is the difficulty. I am not quite certain whether it would be better to give them a voice or not; but my first impression before coming here to-day was to leave the responsibility with the Judge, thinking that he would be advised by those who were appointed to assist him on mechanical or chemical subjects.

1580. You would, probably, make all three responsible for the decision, whatever it might be?—I should not like to pledge myself to an opinion upon that point. I should like to think a little more upon it before I said which would be the best course; but I apprehend that there would not often be a great difference.

1581. (*Chairman.*) Though you may not have worked out these various questions of detail very fully, you are quite satisfied that the present Courts are not what they ought to be for Patent causes, and that it would be advisable to have a special Court with some machinery in the nature of that which we have been discussing?—Quite so.

1582. You also think that Patentees, and those interested in Patent cases, would be satisfied without the supposed protection of a Jury?—I do. All the Patentees that I have ever seen are not favourable to juries for Patent causes where there are difficult and complicated questions. If they are easy to be understood there is no objection to a jury, but in difficult

cases, as they generally are, I think that a jury is not the best tribunal.

1583. I think you have also expressed the opinion that, assuming such a Court to be formed, it might likewise be conveniently employed in the preliminary investigation of claims for Patents?—Yes; I think that that would be better than the present arrangement.

1584. You mean, I presume, that in the event of the Law Officers refusing a Patent, or in the event of their feeling a doubt about the case, the intending Patentee might appeal to the Court, or the Law Officers might refer the question to the Court?—Quite so.

1585. So that there should be, in fact, an appeal from them?—Yes.

1586. (*Lord Overstone.*) Assuming a Court to be constituted, such as you contemplate, do you think that there should be any appeal from the decision of that Court?—I would admit no appeal from that Court.

1587. (*Mr. Grove.*) Would not you admit an appeal upon points of law?—Yes, upon points of law, but I am speaking now as to the fact.

1588. (*Lord Overstone.*) I understand you to state it distinctly as your opinion, that if a satisfactory Court was constituted, and also some additional stringency given to the preliminary examinations, you then think that the Patent Law of this country would be in a perfectly satisfactory condition?—I do.

1589. (*Chairman.*) Are you aware of the proposition which has been made as to the rendering it compulsory for a Patentee to grant licences for the use of his invention?—Yes; but although I think that every Patentee, for his own interest, ought to grant licences, still to make it compulsory by law, I think would land us in more difficulties than we are in at present.

1590. Although it may happen that a man is perverse or foolish enough to shut up his Patent from others, when it would be in his power to make a much more profitable use of it, you think that that is like any other case of an abuse of private property, not to be interfered with without greater inconvenience than the interference would avert?—Yes, I think that the remedy would be worse than the disease.

1591. (*Mr. Waddington.*) I suppose you must have some jury or some other tribunal to put a value upon the licence?—Yes, that is just where the difficulty is; the Patents may vary so much in value, and then, as it is in our own case, there may be Patent after Patent for improvements, there may be improvement upon improvement; and the difficulty is to say how much is to be paid for one Patent and how much for another; they are all combined in one machine, and to have it put to a third party to decide how much is to be paid in case of the Patentee and the licensee disagreeing, I think would be a most complicated arrangement and very difficult to work out.

1592. (*Chairman.*) In point of fact, to make that arrangement, even supposing it possible, would be totally to alter the nature of a Patent?—Yes, I think it would. It would be found exceedingly difficult to carry out; it is one of those things which sound very nice in theory, but it is very difficult when you come to get it into detail.

1593. (*Mr. Forster.*) It has been suggested that the Patent should expire in a certain number of years shorter than it does at present, unless licences were then granted; do you think that if there was such a regulation as that, the possessor and the public would not be able to make bargains together?—I do not think that it would be worth the paper upon which it was written, because the Patentee would escape it by putting an exorbitant price upon the licence.

1594. But the suggestion is that the Patent should expire unless licences were granted for a certain term of years, consequently he would lose the Patent altogether?—Then every Patentee would grant licences, but the price would be exorbitant.

1595. (*Mr. Grove.*) It has been suggested that in the renewal, the Court or whoever renewed the Patent should as it were fix the maximum, that just as in an

Act of Parliament you give a power for tolls up to a certain point, so here the Patentee should have his Patent renewed upon condition that he granted licences, but at a fixed sum, so much per ton, or so much per spindle?—That is where the difficulty would be; when you came to “per,” the difficulty would be to fix that amount, because there are so many Patents in one machine for various improvements in it, that to say how much the sum is to be for the particular Patent which you are going to let expire if the Patentee does not grant licences, would be very complicated and very difficult.

1596. (*Mr. Hindmarch.*) Besides that there are parts of machines, there is a Patent for the whole of a machine, and the use of a part may be an infringement; it would have to be decided how much was to be paid for the whole, how much for a part, and how much for each part?—Yes, you would, I think, get into such difficulties that it would not be simple enough to work well.

1597. (*Mr. Fairbairn.*) How would you deal with the case where a manufacturer has a Patent for a particular machine and he wishes to employ it exclusively in his own manufacture and to grant no licences at all if it is to his interest to do so?—I think it is rather a hard case not to allow him to do so, if he wishes to do it.

1598. Would you make it compulsory for him to grant licences?—No, I am against a compulsory licence.

1599. Then the public would be deprived of that patent if he chose to carry it on upon that principle until the expiration of the Patent?—I think that he ought not to be compelled to grant licences.

1600. But still it is to the interest of every Patentee to grant licences?—Yes, I think so; but you are putting the case where a man thinks it to be his interest to make all himself. I think he is mistaken in doing so, because he will have so many more infringers than he would if he granted licences.

1601. (*Lord Overstone.*) Your view, as I understand it, is this, that the temptation of price never fails to place at the command of the public the fullest supply of an article which can be produced?—Yes.

1602. (*Mr. Waddington.*) As a general rule?—As a general rule. I would not say that there are no exceptions.

1603. (*Mr. Fairbairn.*) It is very frequently remarked that people applying for Patents not only apply for a Patent but make a number of claims for a great number of improvements and different ways of doing the same thing, would you, under those circumstances, confine the Patentee to giving a clear and distinct Specification for one object alone?—I think that the general way of specifying a Patent is to describe fully what the invention is, and instead of having it drawn up at the end with a number of claims, as it used to be, it is generally worded that the Patentee claims substantially as described, and then it would be found out afterwards on trial as to what was new and what was old.

1604. (*Mr. Grove.*) But is that fair to the public, because it may be that some things are obviously new and some things are obviously old; but there may be a great many other things upon which people have great doubt whether they are new or old; the law at present is, that the Patentee should reasonably indicate what is new and what is old, or rather wherein his invention consists?—I think that ought to be done in the Specification.

1605. Do you think that it ought to be done more stringently than in practice it is at present done? The law at present is, that the Patentee should so particularly describe it; but complaint has been made that, practically speaking, that is not sufficiently adhered to in the administration of the law.—I think that the inventor ought to state where his novelty rests.

1606. (*Mr. Fairbairn.*) He may put in a number of clauses to cover any prospective invention or improvement which may take place?—Yes. I think

that a Patentee ought not to be allowed to do that. I think that he ought to be made to state where his novelty and invention rests, and rely upon that only.

1607. (*Mr. Hindmarch.*) In a Specification, framed as you have mentioned a minute or two ago, describing the whole machine, have you not known many instances in which it was extremely difficult for any one to say what was invented, or what was claimed to have been invented?—I do not know that I have found that difficulty.

1608. Is there any difficulty in describing in clear and distinct language what it is that a man has invented, if he really has invented anything?—I think that he ought to do so.

1609. Do you think that there is any practical difficulty in his doing it?—No, I do not see why there should be.

1610. You yourself have had a good deal of practical experience, I believe, as inventor?—No. I never took out but one patent myself.

1611. However, you have had your attention a good deal drawn to Patents and Specifications?—Yes.

1612. Do you see any difficulty whatever in Patentees expressing in clear and distinct language precisely what they have invented and no more?—I think that it ought to be done and that it can be done.

1613. (*Chairman.*) Have you considered the question whether it is expedient to grant Patents to importers of inventions from abroad not professing to be themselves inventors?—Yes, I think that it ought to be allowed.

1614. Do you not think that if any invention of value is used on the Continent if one person does not bring it over another will; is there any object in rewarding with a monopoly the first person who does so?—Yes; I think that the first person who does it ought to have the advantage of it.

1615. (*Mr. Hindmarch.*) Do you think that an importer should have the same degree of privilege granted to him as an actual inventor?—Yes, because practically, an inventor, when he wishes to secure his invention in another country, applies in time before anyone else can get it.

1616. (*Mr. Grove.*) That is where the importer is a mere nominal trustee for the inventor?—Yes.

1617. But there is another case which may be supposed; suppose that a machine invented in France, and published in the newspapers there, and suppose that a person accidentally reading those newspapers at Calais immediately crosses over to England and takes out a Patent for it himself, he may thereby exclude the real inventor from England, would you grant a Patent to such an importer as that?—I think that it ought to be done simultaneously with his Patent in France to prevent a case like that from occurring.

1618. That it should be, in fact, to the foreign inventor or his agent?—Yes.

1619. (*Lord Overstone.*) But not to an accidental observer of a Patent solely in consideration of his sagacity in seeing its utility, and his bringing it for the first time into another country?—I think that that would be best obviated by insisting upon the date in this country being very near the date in the foreign country, or otherwise, that the article should be ineligible to be patented. After it was printed in a newspaper I should say that it was public property. If an inventor abroad choose to let it be published before he takes out a Patent in England he ought to lose his right of having it patented in England.

1620. (*Mr. Waddington.*) He would lose it supposing any one had brought it into practice in England?—Yes.

1621. (*Mr. Forster.*) Do you think that the English public would be losers if it was made impossible for a Patent to be granted to an importer of foreign inventions; do you think that we should lose the inventions?—I have just been stating that I would make it come within the proper date.

1622. Supposing that the right to a Patent in such

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a case was taken away altogether, do you think that the English public would be losers by it?—I think that you would inflict a great injustice upon the inventor abroad if he were not allowed to nominate some one in this country to take out a Patent for him.

1623. But independently of the question of justice to the foreigner, do you think that the English public would be losers by that power being taken away from the foreign inventor?—I cannot see that the English public would be losers.

1624. It has been stated that the inducement of the English market is so great that it might delay the inventions; do you imagine that in the present state of commercial intercourse between us and the Continent that is possible?—I cannot see that there would be much injustice done to the public, but I think that an injustice would be done to the foreign inventor if he were not allowed to appoint an agent in this country to do it for him.

1625. You are in favour of the practice being continued in the interest of the foreign Patentee and not of the English public?—Yes.

1626. (*Mr. Grove.*) Might there not be this interest on the part of the English public that if England granted no Patents to foreign inventors, foreign nations would probably reciprocate, the consequence of which would be that a great many English inventions would be restricted in England, and open abroad?—Yes, that would be the natural effect.

1627. (*Mr. Hindmarch.*) But if Patents are to be granted to importers, ought not, in your opinion, the law to grant the Patent to those who obtain the invention with the leave or the concurrence of the actual inventor?—It might be that the inventor had sold his invention abroad to another party with all interest therein.

1628. Then he would concur?—He might be dead.

1629. (*Mr. Grove.*) You might make it the inventor or his assignee?—Yes, I think it ought to be the inventor or his assignee.

1630. Should not there be some requirement on the part of the Law Officers, or some other persons, that when applications for Patents for foreign inventions were made, there should be either an affidavit or some guarantee that something was being granted for the use of the inventor or his assignees?—Yes, I think so.

1631. (*Chairman.*) I think that you have paid some attention to the law as it respects disclaimers and memoranda of alterations?—Yes; with regard to the disclaiming of Patents as it now stands, a Patent may have something in it which is old and worthless, and it may have something in it which is very good and valuable; but an action being brought the inventor would be cast until he had disclaimed that which was bad in his Patent, and it is now left with the Law Officers of the Crown to decide whether he may hold those who have infringed the good part of the Patent liable to pay for it prior to the disclaimer or not. I cannot see why that ought to be left with the Law Officers of the Crown. I think that the inventor ought to stand in as good a position with regard to that part of his Patent which has been infringed after he has disclaimed, as though it had never had anything bad in it; that is to say, that those who have worked his invention before his disclaimer ought to be responsible for it.

1632. (*Mr. Waddington.*) Though they may have been right in thinking that his Patent was void?—Yes; his Patent wanted amending, but because it wanted amending that is no reason why people should use the part of it which was good, without paying for it.

1633. Still *non constat* that he would have disclaimed. At the time when they used it they had a right to suppose that it was invalid in law?—Yes, as the law stands now, but I think that the law wants altering in that respect.

1634. (*Mr. Grove.*) Would you not then be in this

difficulty; we will assume that a Patentee has a portion of his Patent which is invalid and bad, either from being not new, or from being imperfectly specified, or from some other reason, the public must be assumed to know that it is so invalid and bad, because they take the advice of their legal advisers before they use the thing, and they use it knowing or believing that it is invalid. Then if the Patentee disclaimed, would you let him have the power of proceeding for infringement as to that portion?—I would not make it retrospective. After the law was altered the public would know that if they used that which was new and useful in a Patent they would be liable to pay for it, although the inventor, by some mistake, had put something into it which was old and useless.

1635. You mean that if they had used that which was new and useful and which was not disclaimed, the fact of the Patentee having disclaimed other portions should not make them the less liable for an infringement of it?—Quite so.

1636. (*Mr. Hindmarch.*) You assume that to be a mistake, it may be that a man framing his Specification purposely puts in something which is old, and is holding out to the public a statement that he is entitled to that. If a man does that, do you think that he is entitled to such an indulgence, as to be allowed to make his Patent good, and then bring actions for bygone infringements?—Yes; I do not see any injury at all in that respect, because he is bringing his action for the part which was new and useful, and that is my case; that he is bringing his action for infringing something which is new and useful; and the fact of his having to disclaim something which is neither new nor useful ought not to put him out of Court, and prevent him from getting damages for what had passed prior to that.

1637. (*Mr. Waddington.*) You go upon the old maxim *utile per inutile non vitiatur*?—Yes.

1638. (*Mr. Grove.*) Supposing that there are 20 claims in a Patent and 19 of them are bad, you would still allow the Patentee to proceed for the infringement of the one good claim?—Most certainly, because it is only in the one good one that the mischief has been done.

1639. You know that at present the Law Officer has the power of enabling parties to bring actions for undisclaimed parts of a Patent, and that permission has been granted in one or two cases?—Yes; but as a rule the Law Officers do not grant it; and I do not see why any discretion should be given to them with respect to it. I do not see why an infringer ought not to pay the Patentee for that which he has been using of another man's, which was new and useful, and patented, because he happened to have something in his Patent which was not new and useful.

1640. I presume that the reason for which that power is given is this: that if the Attorney or Solicitor-General thinks that there is some very small part of the Patent which would deceive nobody, and that the substantial part of the Patent has been infringed, he would probably give leave to bring an action for such infringement; but that if on the other hand, he thinks that the Patent has been so mixed up with good and bad, that the public have been practically deceived by it he would say, "You must only proceed upon subsequent infringement 'when you have made the matter clear.' Is not that a fair discretion to vest in the Law Officers with respect to disclaimers?—It would be for the defendant to show that he had not infringed the new part.

1641. The defendant infringes upon the belief that the Patent is altogether bad; he sees so much that is bad in it that he assumes the whole to be bad, and we will take it that he may reasonably assume it: then the Patentee disclaims or not some part which may be valuable, but which is a great deal mixed up with the other parts?—I think that when the law had been altered a party would not go on infringing a Patent when he knew that he was doing that which had been patented, and knew that it was new and

useful. I do not think that parties ought to be allowed to go on working that which is new and useful, and which has been patented by a man because he happens to have something in his Patent which is not new and useful. I think that they ought to be responsible for past infringements.

1642. (*Mr. Hindmarch.*) Suppose that a Patentee comes in the 10th or the 12th year of his Patent (a thing which is by no means uncommon) and enters a disclaimer, and then says to all persons engaged in a particular manufacture, "Now, you have been infringing a little bit of my Patent, and I will make you all pay;" is that a state of things which you think ought to be allowed?—Yes; but it would only begin to take place after the alteration of the law: any alteration which you made now would not allow a Patentee to go back from this time.

1643. Do you think it expedient that there should be such a law?—I do.

1644. (*Mr. Forster.*) Do you not think that the public are in some cases afraid to use inventions (at least, a part of the public) because they do not like to incur the risk of an action for infringement?—Yes; that is why I want to make it more simple.

1645. That being the case, do you not think that it would be a disadvantageous thing for the public if any encouragement were given to a man to be less careful as to whether he included in his Patent that which he had no right to include?—I do not see where the advantage to the inventor would be in putting in that which was old.

1646. Would there not be this, that he would obtain a monopoly over what was old, except in cases in which the public were to challenge his right to use it?—The parties infringing would, of course, have to make themselves informed as to what was new and useful.

1647. Would it not throw upon the public the necessity of doing a thing which it is not just that they should be obliged to do?—There might be a little danger of that, but I think that the balance, looking at it in one way and the other, is in favour of the position which I have taken in the matter.

1648. (*Mr. Grove.*) Does not it invert the onus—does it not, instead of throwing upon the Patentee the duty of stating clearly his invention, throw upon the public the duty of finding out what portion of his invention is new and useful out of a great number of other things—is that the proper onus?—is every tradesman to be bound to scrutinize all Specifications, which we may assume for our present proposition, have a great deal of useless and old matter in them, and to find out what portions are good?—There might be some danger in that.

1649. (*Mr. Hindmarch.*) Does not a Patentee or an inventor when he comes and asks for a Patent say this in fact to the public, "I know of something, which is new and useful, which you know nothing about?"—is not the policy of the law rather in saying that the burthen of proof and the duty should be cast upon him, to show that all that he claims is in truth both new and useful?—To the best of his knowledge.

1650. If that be so, would it be wise to create a different state of things, in which a person might be allowed to say, "I will keep a Patent for ten things, nine being bad, and at the eleventh hour, or just before the Patent is out, I will disclaim all but one, and bring actions against everybody who has been using that one?"—I am not prepared to say that there are not difficulties on both sides, but I think that the hardship on the inventor is very great.

1651. (*Lord Overstone.*) Your opinion is that the power of disclaiming is a just power to give to Patentees, although in certain supposable cases that power may be abused?—No, not abused in disclaiming.

1652. The meaning of my question is, that the power of taking out a Patent in such a form as has been stated in the presupposed cases, would be an abusive power in some instances, and the Patentee, you still think, ought not to lose the full value of his Patent, although he may have taken it out in a form

which, as exercised in the supposed case, might work hardship and injustice?—Yes. I think that if he has made a mistake in putting something in which is old, he ought to be protected for that which is new and useful, and to stand in the same position; at the same time, I must say that, from questions which have been put to me, there is a good deal to be said on the other side.

1653. (*Mr. Hindmarch.*) Supposing a Patentee to have granted a licence to use a particular part of his invention, I believe there is no difficulty in the way of his afterwards disclaiming that. In such matters as that, do you think that there should be any restriction upon the Patentee to prevent him from doing such a thing?—I would leave every Patentee to disclaim what he likes, and no licensee should prevent his disclaiming.

1654. Supposing a Patentee to have granted an exclusive licence to use a particular part of an invention, and to have taken a large sum for the use of it, would you allow that Patentee to go and disclaim it?—I think that a person taking an exclusive licence ought to guard himself against that by the terms on which he takes it.

1655. (*Mr. Waddington.*) He can easily provide against a disclaimer so as to enable himself to bring an action?—Yes; if a person takes an exclusive licence to a thing he becomes almost owner of the Patent and ought to have some control over the disclaimer.

1656. There might be an implied contract that the Patentee should not disclaim any part of the licence, but it would be easy to make an express contract?—It would be easy to make an express contract, and where the Patentee is licensing everybody who comes I think that he having the Patent in his own hand is the best judge of what requires to be disclaimed, and so long as the Patent is held in his own hand without let or hindrance from other people, he ought to be allowed to disclaim what he thinks proper; but if he grants exclusive licences, then those who take the exclusive licences ought to have something to say upon that subject, and to have an agreement with him.

1657. (*Mr. Grove.*) Did you say that you thought that any Patentee might disclaim whenever he liked, subject only to the whole of his disclaimer being an illegal one or that you would still have the Law Officers' permission?—I think that he should have the permission of the Law Officers as now.

1658. (*Mr. Fairbairn.*) If I understand you correctly, if the Patentee chooses to disclaim certain parts of his Patent and adhere to one part which is really useful to himself and the public, you would consider it as a valid Patent the same as if there had been no disclaimer at all?—Yes; that was the impression which I had when I came into this room, but certain questions have been put to me by gentlemen having much more experience than I have, which have shown me that here is a good deal to be said on the other side.

1659. (*Chairman.*) Is there any other point upon which you have suggestions to offer us?—I think that I have exhausted the printed questions which were put before me.

1660. (*Mr. Hindmarch.*) I think that you have been a good deal interested in designs?—Yes.

1661. You have spoken of a peculiar Court to be constituted for the trial of Patent causes. In your judgment, would it be an expedient thing to transfer all decisions respecting such designs to a Court of that description?—I think that all questions of appeal might be safely sent to that Court, but at present, where the parties agree, magistrates can try a case of the infringement of a registered pattern. I think it is well to leave that so, but in any case of appeal against the magistrate's decision, or if the parties were disposed to try it before the Court which I would constitute, I think that it would be the very best Court which they could have.

1662. (*Mr. Grove.*) Another matter might occur.

Sir F. Crossley
Bart., M.P.

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Some persons have expressed a doubt whether there would be a sufficient amount of business for such a Court. Assuming that there is anything in that doubt, you are aware that there are a great number of cases, such as engineering contracts and nuisance actions, which are very similar and which require a similar sort of special knowledge in the Court to Patent actions; in your opinion, would it be desirable that the Judges should have the power of transferring those cases to such a Court?—Yes, I think that very desirable; and with regard to the costs of the new

The witness withdrew.

T. Webster,
Esq., F.R.S.

THOMAS WEBSTER, Esq., F.R.S., examined.

1664. (*Chairman.*) I need not ask you whether you have had a very considerable experience in the working of the Patent Laws?—I have had a good deal of experience of the working of the law, and I have taken a good deal of pains about the alteration of it from time to time.

1665. You were a witness, I think, before the Committee which preceded the alteration of the law 11 years ago?—I was. I prepared the Bill which was ultimately passed by the Committee of the House of Lords. In 1851 there were two Bills introduced; they were consolidated into a third Bill, and that Bill was lost from want of time just at the end of the session, but it was passed with some alterations in the subsequent session.

1666. And since that time you have watched the working of the Act with a good deal of care?—I have.

1667. First, as to the cost of obtaining Patents under the present law, do you consider that that cost is excessive?—I do not, but I think that the cost is a secondary consideration. I certainly think that the cost is quite enough, and any alteration should be towards the reduction of the first cost, provided that you had the other sort of checks, which were contemplated by the Patent Law Amendment Act.

1668. Do you think that there would be any advantage in changing the mode in which the payment is made?—None whatever. I conceive that the periodical payment has answered most admirably. Great objections were urged against an annual payment; that is the mode of payment which exists in some countries, and it is said to be a continual trouble to the Patentees as no doubt it is; it leads to Patents lapsing without any good reason. I conceive that the present mode of payment has operated very well and that it is very judicious, because a party has the option of abandoning his Patent; and if it is a successful Patent the payment becomes a sort of tax to the exchequer, to which, in the case of a successful invention I see no objection in principle. But as regards the first payment I think that it rests entirely upon a different footing.

1669. Then we may gather from you that with regard to the cost you do not think there is much necessity for making any change?—None whatever; if there were any I think it should be towards the reduction of the first cost. With reference to that point I should like to say, that I know that a very great difference of opinion exists among inventors as to the operation of the second and third payments, whether they are omitted to be made by reason of the mere cost, or whether it is found more convenient to take out other Patents. I am not aware that we have been able to collect facts to enable us to arrive at anything like an accurate conclusion as to what is the cause of the great number of patents which drop. You have probably have had evidence as to the number; it is very large, and to that extent operates very beneficially.

1670. With regard to the present mode of obtaining Patents, do you think that the inquiry which takes place before the Law Officers is sufficient or satisfactory?—I think that it is not only useless, but positively mischievous in many ways. It is useless on many grounds; first of all you have two Law

Court, I think that they should not come out of the Consolidated Fund, but out of the surplus money for taking out Patents.

1663. The cases to which I allude frequently last as long and are as troublesome in interfering with other business as Patent causes?—Yes; although they are not called Patent causes they are practically very much of the same character, and would be very well disposed of in that Court if they had the time in addition to disposing of Patents and registering designs.

Officers, and they have no means of knowing that the one may not be granting a Patent for the same thing as the other, and within my knowledge I can mention cases where five or six Patents have been granted within a very short time, containing if not the same thing, so much of the same thing that one Patent would vitiate the other. Therefore, as regards the present system, there is no means of communication—there is no community of information as regards what is being patented; practically almost everything is patented, and under a show of examination and inquiry there is really none. But I say that it is positively mischievous, because it gives encouragement to a large class of speculators, and it is, I believe, from the number of Patents granted to that class of people that almost all the objections which have been made to the Patent system arise. It is mischievous in this respect: persons trading in Patents, mere speculators, get the certificate of the Law Officer, which is supposed among the ignorant to have some effect, whereas it is known perfectly well that it has none, and I believe that the examination, such as it is, without doing any good, is positively mischievous in that respect.

1671. (*Lord Overstone.*) You think that the granting of a Patent by the Law Officers of the Crown upon an examination which you consider to be worthless, gives a fictitious character to Patents with the uninformed public?—I know that it does, and that it is used as such, and I believe that if the matter were examined into, and the statistics carefully taken of the class of Patents and the class of inventors, that would be found to be so. You may separate inventors and Patentees into two classes, the one class pure theorists and persons who have nothing to do with the existing manufactures, and the other class persons who have to do with the existing manufactures. The first class are mere speculators and theorists. I do not use that term at all offensively, because we know perfectly well that a great number of the greatest steps are due to people not connected with existing manufactures. The minds of persons connected with existing manufactures go on in a sort of groove, and they very often are the last persons to improve or adopt improvements when brought before them; but there are people who want protecting against their own ignorance. Persons trade upon this certificate of the Law Officers as an approval, which it is not, and is known not to be. Then, as regards the more legitimate class of inventors, those who are improving in their own line and in their own manufactures, they get no advantage from the investigation whatever; they receive no information as to what other Patents are going on, or as to what may be contained in existing Patents.

1672. (*Mr. Hindmarch.*) In that do you allude to what is called the provisional protection, which seems to give persons a show of a right?—I conceive that to be most admirable. I conceive that part of the new Patent Law cannot be spoken of in too unqualified terms of approval. Under the old system, you had no protection until the Patent was granted, which was very often six weeks or two months, and seldom less than a month after the application; that led to all sorts of practices, which were described before the tribunal on the examination in 1851 as

dodging and worse than horse-jockeying, whereas now you get protection, if you get it at all, from the day of application, and you have your rights limited to a certain extent by this provisional protection. You get a Patent after the show of an examination, whereas, in point of fact, there is no real examination.

1673. Patents are now granted as of the day of the application?—That is an alteration under the new law and a most admirable alteration.

1674. Therefore nothing which takes place after that date can be injurious to the Patentee?—Nothing whatever.

1675. Is not the show of what is called provisional protection beyond that mischievous rather than otherwise?—That is what I am saying. In the objection which I am now taking I do not draw a distinction between the provisional protection and the Patent, because I consider them for that purpose pretty much the same thing. I conceive that the provisional protection which a person gets in this way, without any real examination, and the Patent which he gets for the thing in that point of view, may be treated as the same. A person gets a Patent for what is old or worthless under the show of an examination, and thereby is enabled to trade to a certain extent upon the ignorant public.

1676. The reason why I put the question is this—according to the provision of the Patent Law Amendment Act, the Attorney or Solicitor-General is bound to examine the Provisional Specification, and find it sufficient to satisfy his opinion, and the result of that is said to be the grant of provisional protection, and I thought that it was to that that your observations applied. You are not objecting to that?—No, certainly not. I think that that provisional protection is a most admirable thing. I would only say, as regards that, that I think in practice the principle and the intention of the statute has been rather departed from, and that the rules which the Commissioners issued have led to Provisional Specifications being very much longer than was ever intended, and to occasion conflict between them and the Final Specifications, which, if the letter and the spirit of the statute had been adhered to, would not have been the case. The Provisional Specification, by the 6th section of the Patent Law Amendment Act, is to describe “the nature of the invention,” nothing more than that; the Final Specification is to describe “the nature of the invention, and in what manner the same is to be performed.” Then the Commissioners have made rules dated the 15th of October, 1852, which state that “the Provisional Specification must state distinctly and intelligibly the whole nature of the invention, so that the Law Officer may be apprised of the improvement, and of the means by which it is to be carried into effect.” Those last words have introduced a considerable change in the practice from what was certainly intended, and a confusion between the Provisional Specification and the Final Specification, which, when the patent comes to be litigated, leads to a great number of legal questions, and contributes very much to the expense of litigation, which would be wholly avoided if what I consider the true character of the Provisional Specification had been more carefully preserved.

1677. (*Mr. Waddington.*) And if they confined themselves to the nature of the invention only?—Yes; a practice has grown up in compliance with these words, introducing “the means by which it is to be carried into effect,” which has been the introduction really of what is the intention of the Final Specification, and, as every learned Judge knows, it leads to a great number of questions whenever the matter is tried.

1678. (*Mr. Grove.*) Were not those words probably intended merely to mean that sufficient should be given to show that it was practicable, and could be carried into effect; one can hardly suppose that they meant the same words as in the Final Specification?—That is quite true, but they do come very much within it, and the consequence is that the Pro-

visional Specifications are very often expanded into a length which certainly is very inconvenient, and which entails expense at every stage; they contain matters which properly belong to the Final and not to the Provisional Specification.

1679. Has not the effect of the Provisional Specification, coupled with what the Law Officers do, namely, in seeing that it is not a sham, but appears, at all events, to disclose some invention, been very much to prevent the fraudulent dealing with Patents which took place before?—It has prevented this fraud, which it was a great object to prevent, namely, that a person would take out a Patent with a general title, and would have an open Patent, as it was called, with a general title, and then, when he found any body interfering with him, he would get it sealed, and have six months to put in anything which he could sweep into the Specification by fair means, or others—anything which the title covered. That abuse it has entirely cured.

1680. (*Lord Overstone.*) You have stated that, in your opinion, the examination by the Law Officers of the Crown is a semblance only as regards any useful results, and that it is too much of a reality as regards mischievous results, by what changes would you propose to obviate those objections?—I would propose that the Law Officer should be required (not be at liberty, but be required), as he was required by the bills as they were settled in 1851, to call in some person, in the nature of an assessor or an examiner, for the purpose. Your Lordship is probably aware that a most important alteration took place in the Bills as they were settled in 1851 and in the Act of 1852, which was this; whereas, in the bills of 1851, it was compulsory on the Law Officer to have such assistance, in the Act as it passed in 1852 the alteration was made (I believe that no notice was taken of it at the time) that he should be at liberty to do so; that it should be optional. The consequence was that it left the new system precisely in that respect as the old one was, because it was always optional to the Law Officer to call in assistance if he pleased. I remember distinctly that the point whether it should be optional or not was a matter which was very much discussed in the Committee of your Lordship's House in 1851, and it was said that if it were left optional the system would in fact be defeated.

1681. Your opinion then is that the present state of the law should be brought back to the condition in which it would have been if the Act had been passed finally as proposed in 1851?—Yes, in that respect making it compulsory.

1682. Making the calling in of the aid of an assessor to the Law Officer compulsory?—Yes; that is to say, that every Patent at the first stage of the Provisional Specification, and at the subsequent stage if there was any opposition, should be subject to the examination of some skilled person or persons who should be thoroughly informed of what was done in that particular subject-matter, and who should advise the Law Officer respecting it.

1683. (*Mr. Hindmarch.*) What should he decide?—Upon the Provisional Specification he would decide first of all, the intelligibility of it; and secondly, the novelty of what was therein contained with reference to printed and published documents and prior Specifications.

1684. (*Mr. Waddington.*) Do you recollect what was the objection made before the Committee of the Lords to making the calling in of an assessor compulsory, was it expense or what?—The Committee of the Lords did make it compulsory.

1685. When you said that it was much discussed, I suppose there were some witnesses who objected to making it compulsory?—I do not think that there was any objection to its being compulsory. I think that the objection proceeded from some of their Lordships who were asking the questions rather than from any witnesses. A leading principle of the Patent Law Amendment as proposed in 1851 was that there should be some preliminary examination.

*T. Webster,
Esq., F.R.S.
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1686. (*Mr. Hindmarch.*) You have spoken of the mischief produced by the present examination by the Law Officers. If there were such an examination as you have mentioned, namely, into the novelty of the alleged invention, would not the mischief to which you have alluded be still greater?—I think not, for this reason; I believe that the fact of such an examination being about to take place, and it being known to inventors that such an examination would take place, would stop a great number of Patents *in limine*. I believe that the applications would be much fewer than at present, because a party applying for a Patent would then be informed as to what had been done before, and he would be prepared upon it, and he would go on with his application with an amount of knowledge which he has not now the means of getting, excepting at an amount of cost which a large class of inventors cannot meet, and which all inventors shrink from because the result is at the best so very imperfect.

1687. Would you have such an investigation conducted for the purpose of advising the inventor, or for the purpose of deciding upon his right to a Patent?—Both; in this sense, that the inventor should be fully informed as to what official persons with the accumulated experience of official persons know to have been done before, and then with the view of refusing the Patent if it should turn out to be old; but I think that the question of absolutely refusing a Patent is a matter which requires some consideration.

1688. Do you think that it is any part of the duty of the public to provide advisers for a man who is seeking to have a Patent?—Yes, and I think that it would be very good policy. I think 25*l.* a large sum of money looking to the position of inventors, and the object of the Patent Law. If an inventor pays that for his Patent he has a right to ask for that assistance from the Officers of the public. 25*l.* is a large sum of money to a working man, and to the class of men who specially require this kind of protection. Capitalists have other means of protecting themselves, but I think that paying that sum of money the Patentee has a right to have something for it, and I think the best way in which you can give it him and protect the public, is by informing him as to what has been done before.

1689. (*Lord Overstone.*) I understand it to be your view that the interests of the public are involved in obtaining a well informed decision of the Law Officers of the Crown?—Clearly so.

1690. It is not the interest of the Patentee only that is to be protected by the better instructed information on the part of the Law Officers of the Crown, but the interest of the public?—Yes. I look upon it that every Patent granted, which is invalid, or for a thing which is old (which is the same thing), is a positive mischief both to the Patentee and to the public. It is a positive mischief to the Patentee, because he is spending this sum of money upon a matter which turns out to be fruitless. It frequently leads to a great deal of litigation, and it is an inconvenience to the public who may wish to adopt an invention in the same line.

1691. (*Mr. Hindmarch.*) According to the present practice, either the Attorney-General, or the Lord Chancellor would refuse a Patent for anything which was clearly old?—That is quite true, the theory is perfectly true. The theory of the present system is not objectionable; it is assumed that a Patent is a grant of a matter of favour and not of right; but what I complain of, is the practice. The Attorney-General, or the Lord Chancellor may refuse a Patent, but at what a frightful cost to the applicant and opponent. How many Patents in our experience, or during the last 20 years even, have been refused? You cannot go on opposing a Patent before the Lord Chancellor under 100*l.*, or a very large sum at all events.

1692. (*Chairman.*) The difficulty which occurs to us in such an inquiry as you propose, is this, that there would be, on the one side, the intending Patentee pressing his claim, and on the other side, there

would be no one to represent the public, and therefore there could be no security that the case adverse to the Patentee would ever be gone into?—It might lead to an investigation of a greater extent, perhaps, than would be prudent. The party representing the public is the paid Officer, the Examiner, he is bound to inform himself, he has the matter brought before him, described with a certain amount of detail in the Provisional Specification. If it is not sufficiently described to be intelligible than the party has not complied with the condition, and has not described the nature of his invention; but having described it in a manner which is intelligible, this paid Officer is bound to inform him, and to protect the public by such information, as to what has been done before, and if he should do his duty very imperfectly you would have an accumulation of cases, which would very soon prove that such Officer was unfit for his office.

1693. (*Mr. Hindmarch.*) Then would you cast upon such an Officer the duty of informing himself of the nature of every invention up to the day of inquiry?—Certainly, so far as practicable. There are elaborate indices in the Patent Office. Of course, no examination of that sort can be perfect, but because you cannot make a thing perfect, and because you would pass perhaps 10 patents out of 100, which you ought not to pass, is that any reason why you should not try to stop the 90?

1694. You are perfectly aware, by your practice, that there are a great many inventions and discoveries coming out in manufactures which are never patented at all?—Certainly.

1695. How would persons who have a right to use such inventions and modes of manufacture be protected by such an inquiry as you have suggested?—You cannot do it; an inquiry of that sort must be to a certain extent imperfect; but are you to have no inquiry because you cannot have a perfect one, such as would enable you to give a guaranteed title to the Patent? That objection appears to me to amount to this: because you cannot give a guaranteed title to the validity of a Patent, therefore you will not do that which will have the effect of stopping, *in limine*, one-third of the Patents applied for, with the assent of the applicants.

1696. Then would you say that the only inquiry should be a comparison of the invention sought to be patented with the other inventions already published in writing?—Certainly; that is a large class of cases as to which the Officers ought to give the information, and as to which I think, the inventor, in consideration of the money which he pays, is entitled to have the benefit of the accumulated experience of the office. If other persons came forward and said, "I have used it," I would not exclude that enquiry. That, however, goes to another and to a totally distinct question, with reference to the public, which rests upon a totally different footing, and which, I think, is a very important consideration upon another question, namely, the trial of litigated Patent causes.

1697. Supposing the inquiry to be limited in the way you have just stated, is it not rather the duty of the person seeking for a Patent himself to compare his invention with the prior Specifications to which he has access?—No doubt, but it is so onerous a duty that he will rarely perform it.

1698. (*Sir William Erle.*) Have you informed yourself how many Patents could have been rejected by actual induction? I know that Mr. Woodcroft has turned his attention to the subject, and will give the Commission very important information upon it; he has looked at 100 Patents of one date, and 100 Patents of another, and 100 Patents of another, in order to see how many he could with his knowledge have rejected as bad: have you ever looked to that?—No; I have frequently had brought before me five or six Patents for the same thing within two or three years, or perhaps, even within a year. I remember a remarkable case of a Patent for an improvement in railway wheels where there were as many, I think, as six Patents

almost within six months. That is an extreme case wherein an Officer of this kind would at once reduce them and be of immense service. They were not all six identical, but the probability is that, perhaps, we may assume that each of them had something different from the other. That would be a matter for elimination by the Law Officer.

1699. (*Mr. Grove.*) Do you find this in that respect: when a new discovery is made, do you find that a new discovery being made there is a rush of a great number of Patents, many of them differing extremely little from each other?—No doubt.

1700. There are, perhaps, 30 or 40 Patents, where not above two or three are substantially new inventions?—Yes; the moment a want is felt or a new idea of that kind is started (placing it as a scientific fact, which would not in itself be the subject of a Patent) the moment there is some discovery, which shows some practical application, you have the minds of ingenious men at work, and multitudes of Patents granted for the same thing.

1701. (*Mr. Forster.*) Am I to understand that your answer means this, that after a discovery has been made, many patents are applied for?—By “discovery” I mean the discovery, for instance, of some chemical property, or the application of some property, of matter of recent discovery, or a certain effect, for instance, in dyeing; that becoming known as a chemical law, then persons rush to obtain patents for different applications and different modifications of it.

1702. (*Lord Overstone.*) As I understand it, whenever, from any circumstance whatever, a strong desire on the part of the public for inventions or contrivances directed to a particular object is created that is immediately followed by a great number of applications from persons who conceive, rightly or wrongly, that they are able to minister to that want?—No doubt.

1703. I remember, that before the Committee of 1851, a witness described himself as a professional inventor, as a man whose business it was whatever the public, or any individual of the public told him they wanted to have invented.—Yes.

1704. Have you any idea that any such class of persons exists now?—I will hardly say that they exist as a class; but certainly there are a number of people having more or less talents in that line and who go about inventing. No doubt there are a number of ingenious men who see what is wanted and who apply their minds to it, and who make that their business; there are certainly several people of that class who have made inventions connected with railways; but I believe that you could hardly say that they exist as a class, though, no doubt, there are a number of persons who would satisfy that condition.

1705. (*Mr. Grove.*) If I understand you, you consider that, by the examination which you think should be instituted by the Law Officers, you would practically, although you could not draw a nice line of demarcation, get rid of a good many Patents which are worthless?—I am perfectly satisfied that you would get rid of a very large number, and you would do this, which is more—the party would have got from it the very best possible advice, which it is beyond his power to get even from the most skilful professional men.

1706. Would you do that without any substantial risk (though you might occasionally do it) of shutting out valuable inventions?—I think you would, because I assume that the objections would be stated in writing; that the party applying for a Patent would be referred to such and such a Specification or book, and it would be said “Your Patent cannot be granted because the invention exists in such a publication,” and then the inventor himself would look to it, and it might very possibly happen that there would be a good deal of truth both in the inventor’s view and the Officer’s view, and the result would be that perhaps the Patent would be granted with some modification, but for an invention which was clearly new.

1707. (*Lord Overstone.*) Do you think that the preliminary examination of Patents might be rendered more stringent than it now is without incurring any serious danger of excluding useful Patents, but with a considerable increase in the probability of excluding pernicious Patents?—I do. I may say that was the opinion expressed and supported by a great number of witnesses before the Lords’ Committee in 1851, and upon that the clauses in the Act were formed for the purpose of requiring such examination.

1708. Especially those clauses which required the examination and not merely permitted it?—Yes.

1709. And you think that it has been a great detriment to the reform made at that period, that the original intention of rendering the preliminary examination more positive and necessary was relaxed?—I do; and I would say more than that; that the Act of Parliament has not been carried out in its spirit as to the powers which do exist.

1710. (*Chairman.*) Would you carry that preliminary inquiry into the question of the importance and utility of an invention as well as the novelty?—I would not on any account.

1711. You would exclude that entirely?—Entirely.

1712. You would grant a Patent for anything, however apparently frivolous or trifling, provided this only were proved, that no similar invention was recorded at the Patent Office?—I think that that would be the safer course. I do not like to concur in an opinion perhaps expressed precisely in that way, that a Patent should be granted for anything, however frivolous, but I say that it is difficult to decide what is frivolous; and when one hears these objections, I should say to the persons making them, “tell me an instance of a frivolous Patent and let us see how we will deal with it,” because what may appear frivolous to one person may be useful in many instances.

1713. (*Mr. Grove.*) A Patent, for instance, for the shape of a lady’s hat?—That is not the subject of a Patent at all according to law.

1714. It is a very great question; I believe it has been decided preliminarily as not being the subject of a Patent; but assume for argument’s sake that it is an existing Patent. Take another instance, the shape of an omnibus, which was patented; the cut of a shirt frill?—I would not use the term “frivolous,” but would say that it is not the subject of a Patent at all.

1715. (*Mr. Forster.*) Can you suggest any mode by which you could make it perfectly clear that such things ought not to be patented?—I should say that you must rely upon what is the obvious meaning of the statute, “any new manufacture,” and those can be no new manufactures. It may be a new manufacture to pleat a frill in a certain way with machinery. There is a very important class of fabrics which is simply pleating frills, but having pleated the frill in a certain manner by machinery, it can be no new manufacture to alter the outline of it so as to make a new design.

1716. In your experience in Patents do you know whether Patents are claimed for such things as these?—I certainly have not heard of a Patent, either for a frill or for the shape of an omnibus, but I have known things not very far from them.

1717. (*Mr. Grove.*) The frill Patent was this, that a certain cloth is manufactured, which you may see in the bodices of lady’s dresses with bands united by pleats, and the Patent was for cutting that so as to make two frills out of each bit of pleated cloth, it would be difficult off hand to say that that is not the subject of a Patent?—You might leave that to be discussed.

1718. (*Mr. Forster.*) Would you suggest any mode by which the preliminary investigation should be so conducted as to shut out such a case as that?—I think that the Law Officers and the examiners ought not to express an opinion upon such a thing as that, but should send it forward.

1719. Your improvement would not remedy that evil if it be an evil?—No, but I think that the number

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of cases of that sort are so few that it might be disregarded.

1720. (*Mr. Grove.*) There are a vast number of minor cases which may be the subject-matter of a Patent in law, but which are the result of the necessary progress of every common trade, and are the modifications which one would assume that a party ought to be allowed to make when he is making boots, shoes, hats, or a vast number of other things; would it not be desirable, if you could, to let all trades have that power of reasonable modification and not be shut up by Patents?—"Shutting up by Patents" is an expression which is not very intelligible and which I do not understand. If a man makes an improvement, it may be a small one, and of greater or less value, he is entitled to be remunerated for it. And when you talk about shutting up trades there has been a great deal said about obstructive Patents, but I say give me the instances. It is very easy to sit down and say, "Should not a person have the right of going on in the same line as one who is opposed to him?" I think that that is a theoretical rather than a practical objection, and I do not agree in what has been said about the so-called obstructiveness of Patents.

1721. (*Mr. Hindmarch.*) You have said that you would not allow the Attorney-General to inquire whether a thing was the subject of a Patent; do you mean to say that if the Attorney-General sees, from the Provisional Specification, that the invention sought to be protected is not the subject of a Patent, you would take from him the power of refusal?—I would not do that, but I would have an appeal where the Law Officer thought fit to refuse a Patent, which appeal does not exist now, and that is a part of the vice of the present system. The Law Officers constantly grant a Patent having doubts about it, and constantly allow a disclaimer, having doubts about it, because, if they do not do it, there is no appeal; that I think is a vicious system. I think that there ought to be publicity and appeal. In the present practice you have privacy and no appeal, and I think that a great vice of the present system is the privacy and the absence of any power of appeal in case of the refusal of an application.

1722. (*Mr. Grove.*) The theory of the Patent Law is that, by granting a monopoly for 14 years to an inventor, you secure in the long run more new inventions to the public; but there is a class of minute improvements which may become the subject of Patents, as at present considered, and which, by giving a monopoly for 14 years, would shut out or impede progress far more than if there were no Patent at all; that is to say, that, in the ordinary course of common manufactures, those improvements would necessarily suggest themselves. Is it desirable that those things should be, as I term it, shut up, that is to say, that the Patentee should have the power of threatening anybody who makes those little modifications with litigation, which may be very serious to the person threatened, but which it is worth the Patentee's while to incur?—I think that, taking the proposition as you state it, it is undesirable; but then, I think, that it is an imaginary case, and I cannot conceive that you can have that continuity of invention in any particular trade which would lead to that class of evil, and if you had, I am not sure whether the proper remedy would not be a compulsory licence.

1723. I may tell you that, from the evidence which we have had here, it is not an imaginary case, because we have had strong instances—we have had evidence here that there are a great many of these small matters with which tradesmen are frequently threatened?—All I can say is, that I have heard a great deal about objections to Patents, not, perhaps, put so precisely as you put them; I have asked for the instances, and I have not yet had them. If you can bring instances before me, I shall be obliged to you.

1724. We have been told that Patents are constantly taken out for the shape of boilers for steam engines, mere modifications in shape, which Patents have a very injurious effect, because they prevent the en-

gineers from really exercising their ingenuity in adapting the shape of a boiler to the particular circumstances which they require. That they are met constantly by Patentees saying, "You must not use that shape, I have patented it;" and another Patentee comes with a different shape, and so there are very many Patents merely upon the question of the shape of a boiler?—I should say that the mere shape of a boiler is not the subject of a Patent at all, that it is a misapplication of the Patent Law.

1725. (*Chairman.*) Does it not come to this, that there is no clear or satisfactory definition of what is a proper subject of a Patent?—I do not think that it does. I think that that is a matter which has created very little difficulty. We have recently had some decisions of the Courts, that inventions were not sufficient in amount to support a Patent. I think that it is a practical question. You have something which is new; that precise thing has not been done before, is it an improvement? is it worth a man's while to Patent it? do the public appreciate it? has it a money value? If so, it has a degree of utility which has generally been taken to be evidence of its being the subject of a Patent.

1726. (*Lord Overstone.*) Would not that apply to boilers?—No doubt, to a certain extent it might, but you must draw the line somewhere. As regards an alteration in the shape of an article, you are trenching upon what I will call the Designs Act, as to which there is a clear distinction. The mere configuration, whether of a fabric, or of an article of dress, or of an article of manufacture, is not "the working or making of any manner of new manufacture," which are the words of the statute.

1727. (*Chairman.*) May it not happen, that upon the configuration of a boiler will depend the doubling or the diminishing by one half, of the working power which is got out of it?—I should hardly think so; but, at all events, that would not be the subject of a Patent. The Patent must be for something new in the construction of the boiler; it must be a new manufacture of a boiler, in this respect, to wit, that a boiler has not been made in that way before; it will have been made in that way before if it is made substantially in the same way, simply excepting that the plates are put in of a little different shape.

1728. (*Mr. Hindmarch.*) Take the case of a wheel used on a common road with ordinary carriages, and applied to a railway carriage; it might, of course, be of very great value so applied, but I think that the law is, that such an application is not the subject of a Patent. But would not such an application come within the explanation which you were giving us some time ago. It might be a great improvement, and might have great money value?—That is probably one of the disputed questions. You say that that has been decided not to be the subject of a Patent. The decision went upon this, that in that case the inventor claimed the construction of the wheel; the identical wheel existed before; the application was a new or double use.

1729. (*Mr. Grove.*) Take the introduction into this country of such a material as gutta-percha, a person could hardly take out a Patent for prohibiting the use of gutta-percha by anybody *simpliciter*, he would be obliged to limit it to some manufacture of gutta-percha, which would be a very considerable limitation of his invention?—He would not take out a Patent for prohibiting its use for all purposes; he takes out a Patent for dealing with it so as to make it a useful article. In these cases I think that a great deal of the fallacy is in the argument by reason of the terms in which the proposition is started.

1730. A person who introduces gutta-percha into this country, introduces a thing which is a most valuable aid to a vast number of manufacturers, and which is certain, within five or six years, to become very largely used for a variety of purposes. He could not *simpliciter* Patent it. He could not Patent the mere introduction of a known material. He must Patent it in its application to something special and

particular. He must Patent the manufacture. He could Patent the application of gutta-percha to the covering of a wire, or something of that sort. Although he cannot foresee all its uses, he confers a great benefit, whereas you give to the man who introduces afterwards a minor benefit, a greater privilege than you give to the party himself?—I think not. Gutta-percha existed as a raw material, but in its state as a raw material it was useless. A man got hold of it, and he masticated it and dealt with it by a certain series of processes, and thereby made an article which was useful, namely, the cleansed gutta-percha. This series of processes, heat, and steam, mastication, and rolling, and so forth, practised upon the raw material, made a manufactured gutta-percha.

1731. But is that so?—That was the case with Hancock's invention.

1732. But that was india-rubber?—Charles Hancock had a gutta-percha Patent.

1733. (*Sir W. Erle.*) Has anybody attempted to define "new manufacture"? Has anybody attempted to define what is a fit subject for a Patent?—Yes.

The witness withdrew.

Adjourned.

Wednesday, 13th May 1863.

PRESENT :

The Right Hon. LORD STANLEY, M.P.
The Right Hon. LORD OVERSTONE.
HORATIO WADDINGTON, ESQ.

W. R. GROVE, ESQ., Q.C.
W. M. HINDMARCH, ESQ., Q.C.

THE RIGHT HON. LORD STANLEY IN THE CHAIR.

HENRY REEVE, ESQ., examined.

*T. Webster,
Esq., F.R.S.*
26 Feb. 1862.

1736. (*Chairman.*) I believe you have paid a good deal of attention to the subject of the Patent Law, the administration of which comes before you officially?—I have filled for the last 25 years the office of Registrar of the Privy Council. Her Majesty in Council has the power of extending and confirming Patents under certain Acts of Parliament. It is my duty to conduct that part of the business of the Privy Council, and that has necessarily brought under my notice one portion of the administration of the Patent Law, namely, that which relates to the extension and confirmation of Patents.

1737. The state of the Law I believe is this, that a Patent can be taken out for 14 years only, but there is power in the Privy Council to extend that period for 14 years more?—The Act of the 5 & 6 Will. 4. c. 83., gave to the King in Council the power of extending Patents about to expire, for seven years. Some cases arose in which I apprehend the Legislature thought that seven years might not be long enough to remunerate an unsuccessful Patentee, and accordingly the 7 & 8 Vict. c. 69. enlarged to 14 years the period for which a renewal can be granted; but the power has only been exercised in one or two instances to the full extent.

1738. These cases are invariably referred to the Judicial Committee of the Privy Council?—That is the provision of the statute.

1739. Can you state to the Commission in how many cases, since that power has existed, extensions have been granted?—I have had an extract made from the records of the office which I will put in. The total number of applications from 1835 to 1862 inclusive, for prolongation has been 137; for confirmation 7. I should have stated before that the statute which I have referred to gives the Privy Council not only the power of prolonging Patents which are on the eve of expiration, but also in certain cases of confirming disputed Patents in the course of their existence. That provision has been very sparingly used, as the Commissioners will perceive that only seven petitions have been lodged for the purpose, and only one has ever

1734. The Judges always decide in the concrete. There comes a question of gutta-percha, there comes a question of a railway wheel; but what would be very important, would be a definition of the subject of a Patent, so as to exclude these outlying matters?—This has been attempted. Authors have started from the words of the statute, and have classified existing Patents under certain terms. I think that almost all the attempts have gone back to the old words, "the working or making of any manner of new manufacture." They are very large words. There, no doubt, are certain improvements which require some stretch of language to be brought within that; but I am not aware of any case which has really failed, simply from not being brought within that language.

1735. (*Mr. Hindmarch.*) The question is rather this: could you suggest any definition which would sufficiently include all that ought to be patented, and exclude all that ought not to be patented—going beyond the terms of the Act?—No; I do not think that I could.

been granted. Of applications for the prolongation of Patents 62 have been granted; of those granted 48 have been granted to the Patentees themselves, and 14 to assignees; 46 applications have been dismissed, and of those dismissed 28 were applications on behalf of the Patentee himself and 18 on behalf of assignees; 29 have been withdrawn. At this time there are lodged and pending for 1863 eight cases.

1740. Dealing first with the confirmations, can you state to the commission in what cases that power is vested in the Judicial Committee of the Privy Council?—For that purpose it will be necessary to refer to the Act of Parliament, but I may answer the question in this way, that the second section of the 5 & 6 Will. 4. c. 83., sets forth the intention of the Legislature, and to a considerable extent the mode in which the proceedings are to be conducted.

1741. (*Mr. Grove.*) Does not the object seem to be to prevent a Patentee being defeated by some obsolete matter being raked up which has escaped from the public knowledge altogether?—I believe that was the intention of the clause. One of the cases of confirmation argued at great length before the Privy Council was that of Stead's Patent for wood pavement. The question was whether there had been a user in some other part of the kingdom not known to Mr. Stead; and the intention of the clause was, if it should appear that a Patentee had taken out a Patent, and there had been a user unknown to such Patentee, it should be lawful for the Queen, on the recommendation of the Judicial Committee on being satisfied of the truth and of the *bonâ fides* of the Patentee to confirm his Patent which otherwise would be held to be invalid in a court of law.

1742. (*Chairman.*) But that is a procedure very rarely resorted to?—Yes.

1743. (*Mr. Hindmarch.*) There was a great deal of discussion upon that point in an anchor case?—In Honiball's Patent it was discussed at great length.

1744. Was not that a case of confirmation?—Yes, but it was not successful.

1745. (*Mr. Grove.*) Hurlteloup's was another case?

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—It occurred at the very beginning of this jurisdiction, and I think it was the only one that was granted.

1746. (*Mr. Hindmarch.*) In that case the only publication of prior use was a book deposited in the British Museum; I think a French book?—I have no personal knowledge of that case.

1747. (*Chairman.*) In the case of confirmations, is the proceeding solely *ex parte*, or is it commonly opposed?—The Act provides that any person opposing such a petition shall be entitled to be heard before the said Judicial Committee, and *caveats* are entered precisely as they are against prolongations. It is open to the whole public to oppose these applications.

1748. In practice, has it been found that confirmations have been contested?—I think all of them have been contested.

1749. Have you anything to suggest upon the subject of confirmations?—No.

1750. Dealing with the question of prolongations, can you state to the Commission what has been the average length of time for which Patents have been extended?—I should say that the time varies from three to six years.

1751. What is the minimum period?—I think that none have been granted under three years, and very few over six; five is perhaps the commonest length of time.

1752. Is there any instance of the full time of 14 years having been granted?—That term was granted to Lord Dundonald for what he called his rotary marine steam engine.

1753. When applications are made for the prolongation of Patents I suppose it is open to anybody to oppose them?—The form which is provided by the Act of Parliament, and also by the rules of the Judicial Committee is that these applications must be largely advertised both in the Gazette, in London papers, and in newspapers near the places of residence of the petitioner or manufacturer, and the public have a given period of time indicated in the advertisement within which they must bring in a *caveat*; having brought in a *caveat* they are entitled to be supplied with the papers, and proceed in the case as they think fit. They are also called upon, within a certain limited time, to lodge objections in a written form, which contain the substance of the allegations to be urged against the extension of the Patent, and when the hearing comes on they have a right to cross-examine the Patentee's witnesses by their counsel, and also if they think fit to produce counter evidence.

1754. I presume it is impossible to lay down any rules as to what the conditions shall be of granting a prolongation, that is a matter which must rest wholly in the discretion of the Court, and they can be guided only by their own judgment as to the hardship of the case?—The power exercised by the Privy Council is unquestionably discretionary, and cannot be said to be subject to any strict rules of law. On the other hand a Patentee has, no absolute right to obtain an extension of a Patent; it is regarded as an application to the grace and favour of the Crown, under circumstances which appear to warrant the exercise of such a power. The jurisdiction was in fact transferred to the Privy Council from Parliament, for the Commissioners are doubtless aware that before the Act of the 5th & 6th of William 4. extensions of Patents were occasionally granted by Acts of Parliament in the nature of privileges. When Lord Brougham and Lord Lyndhurst caused this Act to be passed, both of them taking great interest in it, they also sat in the Privy Council to administer it, and they then endeavoured to lay down, with the authority which belonged to them, in the cases which came before the Privy Council, and which are reported, the rules by which their lordships should be governed in dealing with these cases. Their lordships have always said that the first condition for extending a Patent must be the ingenuity and merit of the invention. The second condition must be a certain amount of public utility, inasmuch as very ingenious inventions

have been sometimes brought before them which did not appear to have been sufficiently worked, so as to be regarded as useful inventions. The third, and most important point of all in their Lordships' consideration has been the inadequate remuneration obtained by the Patentee. These rules they have always laid down, and have generally endeavoured to enforce; of course on all these points a certain variety of opinion may be entertained, particularly as to the remuneration. Many cases have come before the Privy Council showing an absolute loss, and these are the easiest to deal with. There are also cases not unfrequently of a certain amount of gain having been realized, but a gain which the Patentee deems quite inadequate to the merit of his invention: on that point opinions may more or less differ.

1755. When you speak of an inadequate return of profit from a Patent being recognized as a cause for its extension, is it possible for the Court to take into consideration how far the want of profit has been due to bad management on the part of the Patentee, from his not being a practical man of business?—Undoubtedly they would inquire into that question, and a Patentee must show that he has exerted himself in every possible manner; that he has done all that lay in his power to bring the invention into public use, and to make the world acquainted with it, and also to obtain that amount of custom which a meritorious invention may determine. With your Lordship's permission I will read a few words from a judgment recently pronounced by the Master of the Rolls, with the full concurrence of the other members of the Judicial Committee, which will have far more weight than anything I can say upon this point: "The grounds upon which their Lordships' grant extensions of Patents, all have reference to the inventor himself. They are, in the first place, to reward the inventor for the peculiar ability and industry he has exercised in making the discovery; in the second place, to reward him because some great benefit, of an unusual description has by him been conferred upon the public through the invention itself; or lastly, because the inventor has not been sufficiently remunerated by the profits derived from his strenuous exertions to make the invention profitable. All these grounds proceed upon the supposition that the invention is a new and useful invention." These are substantially the same grounds that I have indicated.

1756. I presume that it must be a matter of great difficulty ever to come to any decision as to the degree of skill and activity with which a Patentee has carried on his business?—That is a question of evidence.

1757. But if it is not possible to ascertain that very satisfactorily, does it not come to this, that of two inventors, whose inventions may be considered equal in regard to merit and utility, the one who has managed his business well is allowed only 14 years' monopoly, while another, as the reward for having managed his business badly, has a monopoly extended to him for 20 or 21 years?—That is my opinion of the effect of the measure. Your Lordship and the Commission will observe, that these considerations rest mainly on the short comings or failure of the Patentee, sometimes, no doubt, attributable to circumstances not within his control; but it is exceedingly difficult for the Privy Council, especially in unopposed cases, to arrive at a clear knowledge of those facts, and there is the greatest possible difference at the Privy Council between cases that are opposed, and cases that are not opposed. I ought to have mentioned that the Attorney-General is instructed in all these cases, to appear on behalf of the Crown, that is, of the public, and to watch the cases, and if he should think that they do not present a sufficient claim for the intervention of the Privy Council he has a right to address the Court in that sense while watching the proceedings. That has always been done with ability by successive Attorneys-General; but the Attorney-General having, in unopposed cases, no knowledge of the circumstances, except what he can gather from the papers and the evidence of the Patentee, is quite in

the dark, as indeed the Court itself very often must be, as to the real history of the Patent.

1758. Do not you suppose that in an unopposed case, it would always be in the power of a Patentee to make out a plausible case, and to show that his failure was not due to any fault of his own, where it was solely *ex parte*?—That, with the assistance of able counsel, he seldom fails to do.

1759. (*Mr. Grove.*) Are you able to show from your statistics in the unopposed cases how many have been granted and how many refused, and in the opposed cases how many have been granted and how many refused?—Of the 62 applications for prolongation which have been granted, 23 were opposed and 39 were unopposed; of the 46 applications which have been refused, 26 were opposed and 20 were unopposed; of the 29 applications which have been withdrawn or abandoned, 18 have been opposed, 11 unopposed. It appears from these figures that the proportion of successful applications is far larger in those cases which are unopposed than in those which are opposed.

1760. (*Mr. Waddington.*) Do you remember many instances in which the Attorney-General has made serious objection?—The Attorney-General frequently cross-examines the witnesses, and it has not at all unfrequently happened that the Attorney-General has expressed an opinion extremely adverse to the extension of a Patent. There was a remarkable case a short time ago, Betts's Patent for capsules, in which the Attorney-General estimated the profits at about 10,000*l.*, and thought that amount of profit was as much as the invention deserved, but their Lordships were not of that opinion, and they extended the Patent for five years.

1761. Notwithstanding the intervention of the Attorney-General to the contrary?—Yes.

1762. (*Chairman.*) Do you think that that is a satisfactory mode of proceeding; do you think it possible for any Court, in a majority of cases, really to get at a knowledge of what a man has gained or lost by a Patent?—I should say that it is almost impossible to arrive at an accurate and certain knowledge. In the first place patentees, who are very often men of genius, but not men of business, tell the Court that they have kept no accounts; on the other hand they may be men of business who are engaged in other trades, perhaps as manufacturers, and the accounts which strictly appertain to the Patent are mixed up with the accounts of the other business, whatever it may be, which they carry on. It is exceedingly difficult, therefore, to discover how much appertains to the invention, and how much appertains to their ordinary pursuits in business.

1763. If a man carries on business as a manufacturer, is it possible for him, assuming on his part a desire to tell the truth, and nothing but the truth, to calculate precisely how much of the profit of his business he owes to a particular improvement?—It appears to me to be almost impossible, unless it is of a peculiar nature, and that he does nothing else.

1764. Then, upon one of the three points which are considered by the Judicial Committee as a reason for granting a prolongation, even assuming the honesty of the witnesses, it is barely possible to obtain satisfactory evidence?—That I think is the impression of those who have watched the proceedings in these cases.

1765. Further than that, in that necessary and indeed inevitable uncertainty, a scrupulous man who comes forward to prove his own case, is at every disadvantage, while an unscrupulous man has every advantage?—Undoubtedly.

1766. (*Mr. Hindmarch.*) Do you think any advantage would arise from the appointment of an official accountant to whom the parties should always be bound to submit their accounts?—I think that something might be done by the Court in the way of introducing stricter rules; indeed I have lately required the accounts to be lodged rather earlier; but it is not possible either for their Lordships, sitting judicially, or for the Attorney-General, who attends

their Lordships, to verify accounts. I therefore think that the assistance of an official accountant would be very important. I may say, in answer to this question, that cases have arisen in which their Lordships being dissatisfied with the mode in which the accounts were presented, have adjourned those cases for the express purpose of referring them to an accountant named by the Court.

1767. (*Mr. Grove.*) Would it not be a better plan to employ an accountant *pro hac vice* unless you could give some one a high judicial salary; and would there not be some danger in employing a person who would have a voice potential on a question of accounts?—This is for the consideration of their Lordships. The Registrar of the Privy Council has by statute the powers of a Master in Chancery, and if their Lordships thought proper to refer to me the investigation of the accounts it would be my duty to take it. I apprehend that an official accountant would be a more competent person, but their Lordships have the power, undoubtedly, under the Act of Parliament, of referring these questions to any person they may think fit.

1768. (*Lord Overstone.*) Can you state in those cases in which the Judicial Committee has appointed a special accountant to investigate the accounts of an applicant what has been the result?—The result in one case was that the petition was rejected.

1769. Has the result of such investigations been such as to give confidence to the Court in the efficiency of those investigations?—I think it has.

1770. You think the Court are of opinion that an accountant, appointed by themselves to investigate the accounts, will arrive at a correct estimate of what may have been the profits from the Patent?—An accountant can only deal arithmetically, so to speak, with the facts brought before him; he has not the power to administer oaths, or to verify the entries in books except by other books. I apprehend that an accountant can, in no case, exercise what may be termed a judicial investigation, that must be left for the Court or its officers.

1771. Accounts may be badly kept from an ignorance of account keeping, from carelessness and negligence, or from fraud. I wish to ascertain whether, when investigations are ordered by the Court, the result is such as to satisfy them that they have arrived at the bottom of a case, and ascertained what has been really the result of working a Patent when they have to obtain that result through the medium of accounts which are incomplete from one or other, or all, of those three causes?—My answer, I think, would be different in relation to each of those causes. If the accounts were simply badly kept, the intervention of a competent accountant would probably clear up the obscurity and satisfy their Lordships. If they had reason to suspect fraud or suppression, or either wilful or accidental omission, I do not perceive how the intervention of an accountant could clear up that difficulty. I think I may say that there have been cases in which their Lordships have been dissatisfied, and have expressed their dissatisfaction, with the modes in which the accounts have been presented to them.

1772. Generally speaking, is it your impression, from your observation of the proceedings before the Privy Council, that you can, by the investigation of accounts, arrive at a satisfactory conclusion as to the real profits obtained from a Patent?—I am of opinion that it is impossible to arrive at a clear and certain knowledge of the true profits arising from a Patent, and I think the Court has, on more than one occasion, publicly expressed that opinion, not as a general rule, but in more than one case it has expressed that opinion.

1773. (*Mr. Grove.*) Where, as is frequently the case, a Patentee deals in his own patented article, is there any possible mode by which the value of the Patent can be assessed, as contra-distinguished from what may be called his trade profits?—It appears to me to be almost impossible. In the case that I referred

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H. Reeve, Esq. to just now, Mr. Betts was the inventor of a sort of metallic compound, which is produced by rolling ; it was an ingenious invention, and he is also, I believe, a very large manufacturer of those capsules that are put over bottles to contain liquids or pickles. I do not know that it was practicable to distinguish what attached to the invention of this metal from the manufacture of his capsules ; that was one of the difficulties which their Lordships felt in that case.

1774. (*Chairman.*) Looking at it in a more general point of view, do you think the question of the amount of profit that has been made by a Patentee ought to be considered. The principle of the Patent Law, as I understand it is, that as a reward for having made an invention which is useful to the public, the inventor shall be allowed to have a monopoly of its use, or to charge the public for it during a certain number of years. The duration of the Patent is therefore a question between the inventor and the public ; if the inventor has not made out of his invention as much profit as he expected, and as was possible perhaps under better management, is that any reason why the public should be, so to speak, fined by being deprived of the use of the Patent for an increased number of years ?—In my opinion it is not, and it operates in one peculiar manner which I should wish to point out to the Commission. When a Patent is first granted, it always has, or is assumed to have, novelty ; that, indeed, is an essential part of the consideration. Of course when a Patent has expired and is renewed it never has novelty, because it has already been in use for 14 years. The effect of that is, that whereas the invention, at its first starting, being a thing unknown, interferes less with other existing inventions, after the expiration of 14 years you are, as it were, going back to the state of things which existed 14 years before, though the probability is that great progress has been made in science and in machinery in that period, and you are therefore keeping alive, by a new Patent, an invention which may interfere with more recent discoveries.

1775. (*Lord Overstone.*) I presume that, in the case of an application for the prolongation of a Patent, the *onus probandi* rests upon the applicant ; that is to say, he must prove first that he has not obtained due remuneration from it ; secondly, that that has not arisen from culpable inactivity on his part ; and thirdly, that it has not arisen from any essential, or inherent defect in the invention itself ?—Precisely.

1776. The applicant must prove all those points before he can obtain the decision of the Court in its favour ?—Undoubtedly.

1777. (*Chairman.*) With regard to the other two questions which are considered by the Judicial Committee, the ingenuity shown in the invention, and its utility to the public, I presume that the utility to the public can be proved by evidence of the extent to which the Patent has been actually used ?—With regard to the utility to the public, that may be inferred from the vehemence of the opposition. If an invention is useless, it matters very little to anybody whether the Patent is renewed or not, it probably will not be opposed, and it is a matter of little consequence ; but when a strong opposition is made, and sometimes as many as 14 caveats have been entered against the renewal of a Patent, it may be confidently said that in those cases the invention is one of public utility.

1778. The logical conclusion would be from that, that the less the extension of a Patent is opposed, the smaller are the grounds for extending it ?—That is of course the inevitable result ; the more the learned Counsel at the bar prove that a Patent is of infinite merit and value to the public, the more, in my humble opinion, it is undesirable to the public that it should be renewed at all : at any rate the concession made by the public then becomes one of greater value.

1779. With regard to the ingenuity shown in an invention, that must always be, must it not, a mere matter of individual opinion ?—Yes ; but unless the ingenuity is backed by public user, and by utility, it counts for nothing. The other day the Judicial Committee

had before them an electric telegraph of extraordinary ingenuity, which conveyed, I think, designs, and which appeared to be a very ingenious invention, and had, to a certain extent, been tried experimentally ; but it had never been used at all for practical public purposes, and their Lordships thought it not a fit case for renewal.

1780. (*Lord Overstone.*) Active opposition to the renewal of a Patent proves on the one hand the utility of the Invention to the public ; but does it not also tend to raise a strong presumption that the Patent must also have been a source of considerable profit to the Patentee ?—It undoubtedly raises that presumption ; but I presume that the opponents are mainly animated by their knowledge of the effect which the expiration of a Patent will have upon their interests.

1781. (*Mr. Hindmarch.*) Does it not also show that there are many persons who think that a prolongation of a Patent may interfere with the working of other Patents ?—Precisely, and that is what I intended to convey ; for instance, other persons may either be conducting a trade, or may have other Patents. It rarely happens that anybody invents anything wholly ; all inventions are dovetailed and joined into one another, and the possession of a link in the chain of invention very often stops and circumscribes the utility of all the rest, therefore whenever a Patent of merit and value is about to expire there are many persons anxious to avail themselves of it, and frequently, I believe, its expiration sets to work other inventions which could not be used as long as that Patent existed.

1782. (*Lord Overstone.*) Are there many cases of Patents, or the inventions to which they refer, being in themselves very little use, but which Patents are very pernicious in obstructing the inventions of other persons ?—I do not think that I can answer that question from my own personal knowledge or experience, it does not extend so far ; but I have heard that argument used by highly qualified persons.

1783. (*Mr. Grove.*) You were referring to opponents of Patentees in the capacity only of being persons in trade, who were affected, or thought themselves to be affected, by a Patent. Does it not often happen that the opponents are persons who have been, during the whole period of a Patent, litigating the matter with the inventor ?—That is often the case ; but then the cause of that litigation is very often the same that the noble Lord just now pointed to ; that they have rival or cognate inventions which clash with the one they are opposing.

1784. Or do not the trade take up a rival patent for the purpose rather of defeating the party whom they oppose, is not that also a very frequent ground of litigation ?—I have no doubt of it.

1785. (*Mr. Hindmarch.*) In all these cases of prolongation are not the Judicial Committee very much in the hands of experts, as they are called, or scientific men, who come to give evidence upon matters of opinion as to inventions ?—I think that the practice of supporting these cases by scientific witnesses has rather diminished, and is much less resorted to than it was in the earlier times of the jurisdiction. In the first place, at that time, a Patentee himself could not be examined ; but the law of evidence having been altered in that particular, their Lordships always examine a Patentee as to the merit of the invention. I do not think that their Lordships are much guided by the opinions of experts.

1786. Then, in what way do they adjudge ?—By the models, the accounts, and the results of the Patent brought before them ; they use their own judgments upon the results which have been obtained from it.

1787. If an invention is not adopted by the public at all, that, I presume, could hardly give them any assistance ?—The counsel always lay a luminous and succinct account of an invention before their lordships, it being a matter of science, which, to a certain degree, is demonstrated before them ; it is not a matter on which the evidence of a person is of very much weight.

1788. There is an office of the Commissioners of Patents, and there are some persons of skill there ; in your judgment, would it be of use to the Judicial Committee if reports were presented to them of all the cases which were about to be presented to them for adjudication?—That proposal has never been made, and I was not aware that there were the means of obtaining those reports, but I should imagine that if they emanated from disinterested persons, officers of the Government, such reports might be valuable.

1789. A gentleman named Woodcroft has been before this Commission, a gentleman of great skill in matters of that sort, if a report were made by a man of that description, in the case of a proposed prolongations of the merits of the case, would not that be a very useful thing for the Judicial Committee?—I think it would depend in some degree upon the manner in which such reports would be received by the parties. It probably would be said at the bar that such reports would prejudice the case to be decided by the Privy Council, and that it would be very difficult for the Privy Council to arrive at an opinion favourable to the Patent, if the report of such an officer, who, though no doubt a competent person, occupies an inferior position to their Lordships, were in reality held to determine the question. If it were so, the report would, I presume, be produced; it would be warmly assailed by the one side, and warmly defended by the other ; and it would be in fact therefore a transfer of the jurisdiction to an officer of the Patent Department.

1790. (*Mr. Grove.*) Is not all the advantage that could really be got by such a proposal obtained by the present system of judicially watching the cases by the Attorney-General ; he sees the case developed, and is entitled to express his opinion, and indeed to argue it as a counsel not directly concerned for either of the parties?—I think so ; there would be great difficulty in admitting scientific evidence, even on behalf of the Government, unless you were certain that it was perfectly disinterested, as the parties would entirely object to any bias which it appeared to convey.

1791. (*Mr. Hindmarch.*) The Attorney-General does not in practice call a witness?—No, but he might. Lord Overstone observed just now that while the *onus probandi* is thrown on the applicant, he must satisfy the Court that his invention is one of ingenuity and public utility ; he does that in various ways, according to circumstances, by calling such witnesses as he may think the best able to convey that impression to their Lordships' minds.

1792. Did you ever know a case presented to the Judicial Committee in which the applicant was not able to adduce some evidence of that description?—Yes ; I have known of such a case, and I mention this to show to what very small points the jurisdiction has sometimes been brought, or attempted to be brought. The other day a man applied for the extension of a Patent for a carpenter's brace, which is a mere tool. I believe the invention consisted in making it revolve on one point instead of on another—it was a very small affair. Their lordships were of opinion that it was too inconsiderable a matter to exercise their jurisdiction upon and they dismissed the petition ; but in that case there was really no evidence of merit at all.

1793. (*Chairman.*) After what you have stated with regard to the practice in prolongations, do you consider that any advantage arises to the public from there being a power vested in any authority to extend a Patent beyond 14 years?—I think that this jurisdiction has been created, and is necessarily exercised entirely from views of compassion towards meritorious Patentees, but that the interests of the public have been rather sacrificed than not by the exercise of that jurisdiction. I know it is argued that it is the interest of the public to encourage invention, and that you encourage invention by extending Patents and renewing them when they have been unsuccessful although meritorious, but I think that this indirect effect is exceedingly remote, and in point of fact, it must be acknowledged by any person who

has watched the administration of this law, that the sentiment which prevails in the minds of those persons who have administered it has been one of compassion for meritorious Patentees who have not met with an adequate reward. It is rather an application *ad misericordiam* than anything else, consequently an advantage has been given to an individual at the expense of the public.

1794. The only cases, as I understand you, that would come properly within the scope of this privilege, are cases where the invention is of great public utility, but where, nevertheless, the public does not use it, and where, therefore, an invention useful in itself has produced no return to the Patentee without any fault of his own. Is that a case that occurs once in a thousand times?—Yes ; rather more than that. I should be sorry to be understood to say that it never occurs, or that it has not occurred a considerable number of times ; perhaps out of the 62 cases I should say 20 are perhaps cases of real merit and importance, and which would come within the conditions laid down by your Lordship.

1795. (*Mr. Waddington.*) Are there cases in which the public has just begun to use an invention, and of which the real value is perfectly clear from the circumstance of their having used it for three or four years?—Precisely ; there are many cases in which the argument is this, that in reality the merit of the invention was not found out for 10 or 12 years, or from other causes the Patentee had derived no advantage from it. I would venture to cite another case to the Commissioners—the very last that occurred. I allude to Mr. Bovill's invention for an improvement in grinding corn. It is admitted by the Government to be an invention of the greatest possible merit, a great saving of expense, and a great improvement in the results, an invention of very high merit indeed ; insomuch that after infinite labour, and a perfect combat with the authorities, Mr. Bovill succeeded in having his mills introduced at Deptford dockyard and other places ; and I believe that before long all the Government corn for the navy will be ground by those mills. That may be taken as sure proof of very high merit and public utility ; but it sometimes happens, as it did in that case, that by a combination of the trade, and by incessant litigation, and various other causes, a man is kept out of the benefit of his Patent for a very large part of his term, and it is not till about a year or two before the conclusion of it that there is any hope of reward. In that case there could be no two opinions as to the merit of the invention ; it also appeared that the profits have been extremely small, and their Lordships gave Mr. Bovill an extension of five years.

1796. (*Chairman.*) Is not that precisely the case of an Invention having been largely used, and in which a direct reward by the State might have been privately granted?—Yes, precisely. Mr. Bovill's invention was precisely one of those which was of use to all millers, but peculiarly useful to the Government. In the meantime the effect of the extension, although Mr. Bovill was entitled to all consideration, is that it enables the Patentee to charge a royalty of 6d. a quarter on all the corn ground in Great Britain by millers who may think it desirable to adopt his plan.

1797. The Government gain the advantage, and the community pay for it?—Yes.

1798. (*Lord Overstone.*) Is it not the case in many instances that an invention which has ultimately proved to be meritorious and useful remains not properly understood, and therefore not adopted by the public until some accidental circumstance removes that difficulty, and then the public burst as it were at once into the active application of it?—That undoubtedly sometimes occurs, and I have no doubt that there are many meritorious inventions, especially of this very novel character, which are precisely the most difficult to bring into use.

1799. The principle of the Patent Law, as I apprehend it, is this, to stimulate invention and to reward

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the inventor by granting him a temporary monopoly of the benefits of his inventions?—Exactly so.

1800. The determination as to the duration of that temporary monopoly must necessarily be an empirical act, for you can, upon no principle, decide that seven years is more proper than eight, nine, or 10 years, whether the period for which it is granted is the period which will give the inventor his due remuneration can only be known by experience, is not that so?—Yes; but if that doctrine were to be acted upon, the law would have, or some administrative power would have, to adjust the terms of the Patents in every case, for they all differ; one man may be largely remunerated in three years, and another man may not be remunerated in 14 years.

1801. But that period being settled generally by law, is it not expedient, for the purposes of justice, and also for the full accomplishment of the principle of stimulating invention, that there should be in some competent tribunal a discretionary power, in special and strong cases, to correct the defects of that empirical process of fixing the period for which a monopoly is granted?—That there should be some such power, I think, must be admitted: it existed in Parliament before the present jurisdiction of the Privy Council was established, inasmuch as in some few cases, Parliament interposed to grant new Patents; it might also be converted, as was suggested by the noble Chairman, into a reward by the State to a great public benefactor; but you must deal with these exceptional cases as they arise.

1802. Do you think that any other mode of dealing with these exceptional cases can be suggested better than the existing one?—My impression is, that although infinite care has been taken by the Judicial Committee to investigate these cases, which their Lordships have done under a sense of judicial responsibility, for that was the intention of the Act of Parliament, yet the working of the present system has not been satisfactory to their Lordships themselves.

1803. Can you suggest any other system which you think would hold out the probability of being more successful?—It is difficult for me to answer that question. I should say not by the existing system of Patents; but supposing a revision of the Patent Law to be contemplated, and some authority created with a greater and more thorough control of Patents, I can imagine such a commission or authority to be invested with some discretionary power which might be used more effectually than it is by the Privy Council.

1804. Can you define more clearly the idea you have broached in your last answer, of some important change in the present system of Patent Laws that would facilitate the means of getting over the difficulty as to prolongations?—I have not directed my attention very specially to this part of the subject, which I humbly conceive to be a matter of deliberation for this Commission; anything that I venture to submit, I do it with the greatest diffidence, but I have imagined that it might be suggested, that whereas the issue of Patents generally is now a matter of common right, very little controlled at least by the Attorney-General, something in the nature of a controlling body, partly judicial, and partly scientific, might be created, that would exercise some control over Patents, both in the original granting of them and also in renewing them. If such a body existed, and if it were armed with great authority and great judicial strength, I should say that if any body was to renew Patents such a body would be the fittest to renew them.

1805. You refer to a preliminary inquiry by a well-constituted tribunal before a Patent was granted?—Yes. I meant to convey that, supposing that principle were adopted, and that a body was created, a board capable of making that preliminary inquiry, and exercising that species of control upon the original grant of a Patent, then I should be disposed to say that some board of that kind would be better qualified than any other to entertain the question

which may, in some few instances arise, whether a Patent ought or ought not to be renewed.

1806. (*Mr. Hindmarch.*) If you had no preliminary examination before the granting of Patents, do you conceive that it would be useful to have some preliminary inquiry before the renewal of them, it might be very inexpedient in the one case, but it might be highly expedient in the other?—That I understand is what the Judicial Committee are anxious to do, and the inquiry which takes place at their Lordships' bar upon oath, and under the sanction of a proceeding before a high Court, is precisely that species of inquiry; the word "prolongation" or "extension" is commonly applied to these things, but it should be borne in mind that it is a renewal, that the Letters Patent issued on the recommendation of the Judicial Committee are new Letters Patent, and their Lordships have even power, under the last Patent Act, to introduce into those new Letters Patent, or of directing the Chancellor to do so, any conditions which they may think fit.

1807. (*Mr. Grove.*) You consider that the cases in which it is desirable that a Patent should be prolonged beyond 14 years are very exceptional, or that practically speaking, more harm than good is done by the power of granting prolongations?—That is my opinion.

1808. Have you ever considered the question whether, if Patents were granted for shorter periods, for seven or 10 years, with a power then to prolong them for 14 or 15 years, that would meet your views, that is to say, supposing a Patent to be remunerative within a reasonable time of its inception, 10 years might be long enough, and if it met with great trade opposition, or with peculiar circumstances which did not bring it into profit till after 10 years, then to give a power of extending it on to 14 or 16 years?—If that view was adopted of course it would apply very largely and to an immense class of Patents. Assuming that the Commissioners are of opinion, and the public appear to be of that opinion, that, if Patents are to exist, 14 years is a reasonable period, there may be some cases in which large profits are made in seven years, and there may be others on which it is demonstrated that in a shorter period a Patent is of no use. In that latter case where it is shown that a Patent is of no use at all, I think it would be a great public advantage to have some means of quashing it altogether. I have no doubt that there are numerous instances of Patents which are of no use, but which stand in the way, and are used as a means of litigation to embarrass other inventions.

1809. Would it not be much less expensive to quash a Patent if the period were made shorter?—Yes.

1810. (*Mr. Hindmarch.*) Have you found that no practical inconvenience has arisen from the fluctuating nature of the body constituting the Privy Council; does that or not introduce into their decisions a good deal of variation in the mode of dealing with the questions which come before them?—Their Lordships are extremely desirous to act upon the principles which have been laid down in the reported cases, as in the case I referred to just now; they have always endeavoured, as far as possible, to give uniformity to the spirit of their decisions; at the same time it must be observed that where the principles which regulate their jurisdiction are not principles of strict law or equity, but that a large discretion is vested in the court, you cannot expect in decisions of this kind so much uniformity as you may in the decisions of a court of justice administering law.

1811. (*Mr. Waddington.*) What is the construction that has been put upon the words "due remuneration"? is that the remuneration which is considered to be due to the value of the invention?—It undoubtedly makes a part of the consideration, but that is precisely a subject to be discussed at the bar.

1812. (*Mr. Hindmarch.*) Is there not some little difficulty arising from this circumstance, that a Patentee has frequently received a very large amount of remuneration from the public, but has spent nearly the

whole of it in litigation?—That is one of the matters that are brought before the Judicial Committee.

1813. In a case such as that the public have already given the Patentee the remuneration which they ought to give him; but ought the public to give it over again because he has lost it in law?—The Judicial Committee have generally held that losses in litigation, although they may be considered to entitle a man to some compassion, are not fairly to be taken as a set-off against the profit of the invention.

1814. (*Mr. Waddington.*) Have you observed that the words in the statute are confined to “due remuneration” for his expense and labour in perfecting the invention, which seem to exclude remuneration due to his talent and to the ingenuity of the invention. Has there been any decision in any case in which it has been expressly stated that they took into consideration the value shown by the ingenuity of the invention as well as of the expense and trouble of bringing it to perfection?—I have not present to my mind any cases; but I have no doubt that in Webster’s Reports of Patent Extensions, the Commissioners would find several cases in which those views have been laid down by Lord Brougham, that the extension was not only to be confined to strict remuneration or indemnification for the cost and labour of the Patentee, but that the merit of the invention was also to be paid for.

1815. (*Chairman.*) You say, that these applications for extensions are very much looked upon as appeals *ad misericordiam*. Do you think that in the case of two Patents, under precisely the same circumstances, as to public utility, and as to non-productiveness, if one claim was brought forward by a large capitalist, say a manufacturer, and another by an Inventor without capital, that the latter would have any preference over the former; that the charitable view of the case would be taken?—The Judicial Committee have repeatedly had this question brought before them; sometimes the case of a poor Patentee and sometimes the case of a rich Patentee; but more commonly where the Patent has passed into the hands of assignees, who have perhaps subscribed money to work it. The Act of Parliament, the 7 & 8 Vict. c. 69, expressly provided, by a declaratory enactment, that assignees were to be equally competent to receive extensions of Patents with the Patentees themselves.

1816. (*Mr. Waddington.*) I believe the assignees are not mentioned in the first statute?—Not clearly; some doubt arose upon that point, in consequence of which the second Act cleared up that doubt. There is no doubt that numerous applications have been made by assignees, and the Privy Council have had to consider a fresh difficulty. Assignees are commonly capitalists who have purchased a Patent right from an Inventor; the Inventor must be taken, therefore, to be discharged from his interest in the Patent, and to have received an equivalent which he must be supposed to have considered remunerative, since he has divested himself of the Patent in exchange for it. Then, what is the position of the assignees? The Privy Council have laid it down that a commercial company holding a Patent is not entitled to the same amount of consideration as a Patentee or an inventor. In the case of the Electric Telegraph Company, they had purchased Mr. Wheatstone’s Patent, for 30,000*l.*, consequently the Patentee was adequately remunerated; he did not petition for an extension of the Patent, but the company which had invested this sum of money, as they had not gained so much advantage as they anticipated, applied for an extension of the Patent, and on that occasion Lord Langdale, then Master of the Rolls, used these words: “We do not say it would be right to take into consideration the mere commercial transactions of a company of this sort, if it had turned out that the contrary had been the case. They buy this Patent right; they buy it for a commercial purpose, not at all with the view of encouraging the inventors, or of rewarding the inventors, though,

“when they are sinking their own capital in this particular mode, they do incidentally give a profit to the inventors. It is not the same case as some cases which have arisen, where the inventor, being himself struggling with difficulty for the want of capital, is obliged to obtain the assistance of persons who have capital, giving them a share of the profits, which may be done in a great variety of ways, and under many different circumstances; but those parties, with a knowledge of the value of the invention and its capability of being reduced to practical use to any extent to which capital might be employed upon it, think fit to engage that capital in carrying on a trade by the use of this particular invention.” In that case their Lordships declined to prolong the Patent; and I think this shows that the view taken by the Privy Council is, that the personal claim and merit of an Inventor have a very large share in the extension of a Patent, and that they are not prepared, as was laid down in the case I have just referred to, to deal with the same degree of liberality with a capitalist.

1817. (*Chairman.*) If they make it a matter of personal reward, do they consider the character and conduct of the applicant?—His conduct, his energy, and activity in bringing his invention into use, and perhaps I may add that there are some circumstances which inspire a peculiar interest in the invention. I remember the case of a workman, a man in an extremely humble position, but who had invented some very important addition, I think it was to cotton spinning machinery. Their Lordships justly thought that that was a meritorious and interesting invention, and they extended the Patent, although it was in the hands of an assignee, but they annexed to it the condition that the original inventor, the workman, should have a certain profit out of it; I think 400*l.* a year, and that of course raised him above his original condition. I mention this case to show that, undoubtedly, personal considerations have a real weight, and it has been thought right, and that the intention of the Legislature was, that they should have weight.

1818. Then, in point of fact, a prolongation operates sometimes as a sort of charitable relief and sometimes as a personal reward, the cost of granting the reward falling upon the community at large?—Yes, undoubtedly.

1819. (*Mr. Hindmarch.*) In answer to one of the Commissioners a short time ago as to the construction of the Act of Parliament, and as to the meaning of the words “due remuneration,” for expense and labour and so on, those words, I believe are in the 7th and 8th Victoria. I believe there are no words to show what the prolongation is to be granted for, in the first statute section 4 merely gives a power to prolong, without saying what for?—I find nothing in the 4th section of the original statute which implies any motive or ground at all, it is simply that the Judicial Committee may report to His Majesty a further extension of the term, and His Majesty is hereby authorized and empowered, if he thinks fit, to grant new Letters Patent.

1820. There is no criterion according to which the Privy Council can act?—No, it is a mere matter of discretion. In some few cases a power has been exercised in the case even of imported Patents.

1821. But more sparingly?—Yes; it has been held by the Judicial Committee that no Letters Patent can be granted in this country for an original foreign Patent, if that has expired before the new Letters Patent are applied for.

1822. That, I believe, turns upon some of the sections in the subsequent Act?—Yes, in the last Patent Act.

1823. (*Mr. Grove.*) Has not litigation been regarded in this light, that, but for the litigation, the Patentee would have received due remuneration, the litigation not arising from any fault of his own; but being in some sense a testimony to the merit of his invention on the part of the trade, and coming there-

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fore in aid of the Patentee, as showing that the litigation has caused a subtraction from what otherwise would have been his profits?—Undoubtedly, that has had, to a certain extent, that effect, however difficult it is to defend it on principle; for instance, in the case of Betts's Patent, the actual receipts, I believe, were extremely large; but Mr. Betts had been engaged in enormous litigation, principally with his own family, and I suppose it must be taken that a deduction was made from his profits on that ground.

1824. There had been very great litigation in that case; but I believe the only litigation the Privy Council took into their consideration was not that which he had had with his family, but the litigation he had had with opponents of his Patent, as in the suit of Betts and Menzies?—There is no doubt a distinction, which the learned Commissioner has justly pointed out, in the nature of litigation. Litigation may arise on questions of property which have little connexion with the merit of the Patentee, and the litigation which I now remember their Lordships thought ought to be subtracted was this—Mr. Betts had been obliged to sustain a very protracted struggle in order to defend the validity of his Patent; it was at last decided by the House of Lords, that his Patent was valid, and he recovered costs as far as costs were recoverable; therefore it must be regarded in this way, that he defended himself against infringements by the only means which the law placed at his disposal, and the expenses he sustained for this purpose were unavoidable. At the same time it must be acknowledged that if his Patent was renewed, he was indemnified for those expenses by the prolongation of it for so many years. I may mention that for the purpose of reference, in the Commissioners of Patents Journal, Nos. 549, 716, and 769, all the cases which have been before the Privy Council have been published; there is a digest of all the applications and of their results,

so that any person wishing for further information can obtain it in this publication.

The following paper was handed in:

TABLE showing the Number of Applications to Her Majesty in Council for Prolongation or Confirmation of Letters Patent, distinguishing those granted, dismissed, &c.

Total number of applications from 1835 up to 1862 (inclusive):—

For Prolongation	-	-	-	-	137
For Confirmation	-	-	-	-	7
					144

For Prolongation.

Granted	-	-	-	-	62
To Patentees	-	-	-	-	48
To Assignees	-	-	-	-	14
Dismissed	-	-	-	-	46
On application of Patentees	-	-	-	-	28
" " of Assignees	-	-	-	-	18
Withdrawn	-	-	-	-	29
					137

For Confirmation.

Granted	-	-	-	-	1
To Patentee	-	-	-	-	1
Dismissed	-	-	-	-	6
Application of Patentees	-	-	-	-	5
" " Assignees	-	-	-	-	1
					7
					Total - 144

Lodged and pending in 1863, 8 cases.

The witness withdrew.

Monday, 18th May 1863.

PRESENT:

The Right Hon. LORD STANLEY, M.P.
The Right Hon. LORD OVERSTONE.
HORATIO WADDINGTON, ESQ.
W. R. GROVE, ESQ., Q.C.

W. M. HINDMARCH, ESQ., Q.C.
W. E. FORSTER, ESQ., M.P.
Wm. FAIRBAIRN, ESQ.

THE RIGHT HON. LORD STANLEY IN THE CHAIR.

ALFRED VINCENT NEWTON, Esq., examined.

A. V. Newton,
Esq.

18 May 1863.

1825. (*Chairman.*) You have been a Patent Agent for a considerable number of years?—Yes.

1826. As to the question of the cost of obtaining Letters Patent, do you think there is any reason to complain of the present expense incurred in obtaining Letters Patent?—No, I think there is not.

1827. Do you think any improvement could be made in the manner of making payments?—The present mode of making payments I objected to on principle before the present Act was passed; and when I say that the cost of obtaining a Patent is not, in my opinion, too great, I allude to the first cost of a Patent. I think that payments at the end of the third and the seventh years are objectionable; but under the present circumstances, it being assumed that the law is to be changed and that considerable expense would be incurred in founding for example a special court to try Patent cases, or to investigate matters that are now not investigated, I think it would be inexpedient to alter the payments which are made in the third and seventh years.

1828. You would, I presume, put it this way, that though it is not expedient that Patentees should be called upon to contribute to the general revenue of the country, yet, that they may be fairly called upon to pay any special expenses incurred in obtaining their Patents?—Precisely so; but with respect to the mode

of paying those instalments, I think that a worse mode than the present could not have been contrived, and in order to ameliorate that system, I some time ago drew up a little bill, which I thought would entirely obviate the difficulties under which Patentees now labour. It has but one clause, which is this: "Where
" by misadventure or otherwise, the Patentee, assignee, or other person, having a beneficial interest in
" any Letters Patent for inventions, shall have failed
" by himself or by his agent to produce at the Office
" of the Commissioners of Patents, before the expiration of the third and seventh years respectively of
" the grant, the said Letters Patent, duly stamped, it
" shall be lawful on application being made in writing,
" by the Patentee or other person or persons beneficially interested in such Letters Patent, or his or
" their agent, at the Office of the Commissioners of
" Patents within [] months from the date of this
" Act, or from the date of the expiration of the term
" for presenting such Letters Patent duly stamped,
" for the Lord Chancellor to issue an order empowering the Clerk of the Commissioners to endorse on
" such Letters Patent, or on a duplicate thereof, the
" same being first duly stamped, a certificate of the
" payment of the stamp duty, provided such Letters
" Patent be presented for that purpose at the Office
" of the Commissioners within six clear days from

"the date of such order, and such Letters Patent so endorsed shall be held to be in force and binding, as if no delay had occurred in presenting the Letters Patent, or the duplicate thereof, duly stamped, at the Office of the Commissioners, agreeably to the provisions of the above-mentioned Act." That is to obviate surprises. For example, a Patentee may forget that his payment is due; he may find that he has lost his Patent, and he has no time to get a new one; he may be refused a copy, though I should say, from reading the Act, he has a right to a copy if he offers the proper sum put down in the Act, but I have known many cases where, even when the money has been offered, it has been necessarily refused because the Act will not allow of the least latitude in the payment of those taxes.

1829. What would be the effect of the change you suggest?—It would be this: If a person who, having by misadventure failed to stamp his Patent or to record the fact of stamping (for either omission is equally fatal to the Patent) at the proper time, applies to the Lord Chancellor and shows sufficient grounds for an order to be issued, that then the Lord Chancellor shall have the power of issuing an order to indorse the Patent as duly stamped, whereas, at present, if the Patent is not stamped and the fact recorded within a certain period, there is no means short of an Act of Parliament to remedy the omission. There has been a remedy in one case, but it cost some 500*l.* in obtaining an Act of Parliament for that purpose.

1830. You would merely give an optional indulgence in a case where the payment had not been made in time?—Precisely so; it would be a most important change, and of great advantage to Patentees, and to the Patent Office fund.

1831. How do you think that that indulgence ought to be given; would you make it purely discretionary with the Lord Chancellor?—Yes.

1832. Would not that throw a very large and arbitrary discretion upon him?—I should not object to its being something more positive and defined; but there should be some such protection where there has been no wilful neglect.

1833. It is probable that every person who had not made the application in due time would have some excuse for not having done so; would you throw upon the Lord Chancellor, or any other authority, the task of inquiring into all those excuses and forming a judgment as to their validity?—Precisely the same thing is now done by the Lord Chancellor when an application is made for a new Patent under the present law; if a man loses his Patent he has to apply for a duplicate, and he must give reasons.

1834. As to the question of preliminary investigation do you think there ought to be a preliminary inquiry of a more searching character than that which at present takes place?—I do not think it is a necessity, but if we were to set up a system that would be as perfect as we could make it, I think that then preliminary inquiry would be an important branch of the new system; I think the system as it is works tolerably well, and to institute a preliminary investigation would be rather a costly matter.

1835. To the Patentee or to the public?—To the Patent Office.

1836. Do you think that any preliminary inquiry could be so conducted as to be satisfactory in the majority of cases, that any tribunal would be competent to judge as to the novelty and as to the value of a Patent in every case?—Not as to the value, and not completely as to the novelty. If a preliminary investigation is to be made I think it should be made on the principle they have adopted in the United States, but only to a certain extent on that principle. I think that the Patentee has a right to know what is in the office in the shape of inventions, that if he applies for a patent to-day, and an application was made for a similar thing the day before, he ought to be informed by the proper functionary in the office that he has been anticipated. I certainly think that an examination ought to be made so that a Patentee should know

what the six months' unspecified Patents, preceding him contain, or rather that they do not contain what he is applying for a patent for.

1837. Would that in all cases be a simple matter to decide?—Yes, I think so; it would require a careful examination, but it would not be a very great labour.

1838. Is it the fact that at present a man can only ascertain by inquiry at the Patent Office that there is no Patent of an earlier date than within the last six months similar to his own; that is to what has passed in those six months he is left entirely in ignorance?—That is so.

1839. You think that such disclosure could be made without interfering with the rights of those who are taking out Patents, or who have taken them out within the last six months?—Yes, I think so.

1840. In the event of a tribunal being instituted for the purpose of making a preliminary inquiry, would you have the judgment of it final and without appeal, or not?—I should appoint examiners whose duty it would be to make a private record of inventions as Patents were applied for them; those examiners should notify to a Patentee when he was anticipated; and their jurisdiction should end there.

1841. In that case there would be no necessity for an appeal, because the matter would be then in your opinion simple and obvious?—Precisely.

1842. Have you in the course of your experience come to any conclusion as to whether the multiplicity of Patents which has existed in the last few years has caused any public inconvenience?—I do not believe it has at all. I think that is a mere dream.

1843. You have not heard of complaints of manufacturers having been interfered with in their business?—Never.

1844. You have not heard complaints of parties engaged in a particular business buying up on speculation every Patent connected with that business so that it was hardly possible for any one to enter the same business without infringing some one of those Patents?—Yes, I have heard of two such cases.

1845. You do not apprehend that that is a common subject of complaint or that the public suffer much from it?—Certainly not.

1846. Having come to that conclusion I infer that you do not think any provision is necessary for the purpose of limiting the number of Patents and protecting the public against Patents of trifling value?—I think any legislation to limit the number of Patents would be a serious evil, that is to say, Patents of value.

1847. Do you consider that Patents ought to be refused on the ground of the trifling and frivolous nature of the inventions for which they are claimed?—There is one class of Patents which I always thought should be absolutely refused, namely, Patents for obvious applications. I may take for instance the same example that I have used before, and as it is no longer a Patent there is no harm in it, namely, the use of alpaca for covering umbrellas. I think that it should be open to any one to make an obvious application of any manufactured article that is to be purchased in the open market irrespective of any Patent, simply because there is no invention in it.

1848. You say "an obvious application of a manufactured article," would not the whole controversy turn upon whether the application was obvious in its character, or not?—Yes, but there could be no difficulty in coming to a conclusion upon it.

1849. You would not allow any person to take out a Patent for the use of a certain material, for a purpose to which that material had not been hitherto applied?—No, not if that material was obviously applicable to the purpose. There is another illustration of my meaning in an invention which has proved itself to be really a patentable one; it has gone into courts of law and been upheld; but for such inventions I would refuse a Patent. It was for the printing of a fabric in imitation of another fabric. It was a woven fabric with a "flushed" back, and printed with a zebra pattern, to represent a manufacture well known

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in the East, and produced by weaving printed warps. A Patent was taken for printing that fabric (which was a fabric well known in the plain state) with a particular pattern, and that was not upset in a court of law. It was merely common printing, applied to a fabric that had hitherto not been so printed.

1850. Would you define more accurately than it is at present defined what should be the subject of a Patent?—No, I would not, because I think if you draw the terms closer there might be a great evil in it. The terms are now open, and I think they should remain so, but it should be in the province of the Examiner or Law Officer to whom those applications are made to refuse what he considered to be what I term an obvious application.

1851. (*Mr. Grove.*) In using the term “obvious application,” do you limit it to cases where there is obviously no change of form or figure at all; as for instance, in the case of alpaca applied to umbrellas, as silk had been formerly; or would you extend it to cases where there was a slight change of form?—Suppose you wished to ornament a book cover which is now a plain cover, and you subjected it to the well-known process of printing in one or more colours, that I should say would be an obvious application.

1852. There are several Patents relating to photographic albums, for different modes of slipping in the photographs and securing them and so on, would you have Patents for such things as that?—That I could not say unless I saw the particular example. Where there was an improvement produced by a new construction, I would grant a Patent however small the improvement.

1853. (*Chairman.*) You would not in any case refuse a Patent merely because it dealt with a very trifling subject matter?—I think it would be a dangerous precedent to adopt.

1854. Taking such a case as that which we are informed has occurred, a Patent being taken out for a new form of bonnet, or for a shirt frill, or a trifling matter of that description, do you think that that is a proper subject for a monopoly?—If it is a new form and merely an ornamental form it is not the subject of a Patent now; if it is a new form and there is a special utility in that new shape or form then I think it is a subject for a Patent.

1855. (*Lord Overstone.*) Are you prepared to suggest any form of words that would include all those things which you think ought to have Patent rights, and all those things which you think ought not to have Patent rights?—No; that is perfectly impossible for anyone to do I think; but the Patent law may be fairly interpreted to extend to *all means, whether mechanical or chemical, which embrace a new principle of action or of construction*; while it excludes all new applications which do not involve a change in principle of action or of construction to obtain the desired result.

1856. (*Chairman.*) Do you think greater facilities should be provided than exist at present for the repeal of invalid Patents?—I do not see any use whatever in repealing invalid Patents.

1857. Will you explain that answer; how can they be known to be invalid till they have been tested in a court of law?—If they have been tested and proved to be invalid in a court of law they are perfectly harmless. My experience of attempts to repeal Patents leads me to the inference that Patents are not subjected to the ordeal of scire facias proceedings unless of great commercial value.

1858. Do you think that no more convenient method could be found than exists at present for testing the validity of a Patent?—I think the present system of testing the validity of a Patent is as bad a system as we could possibly have. That I should like to speak upon more fully.

1859. Do you think that any change ought to be made in the tribunal appointed to try actions and suits instituted by Patentees?—Yes, I think so.

1860. Will you explain to us why you think so, and what is the nature of the change you would

recommend?—I think that no new form of tribunal would meet the objections which appear to exist in the present system without something more, and that is that the cases before being brought to trial should be prepared by a proper officer; that the grounds of complaint should be considered, and that the grounds of defence should be considered by a proper officer; that then the case should be drawn up and put into shape, and in that shape tried.

1861. Do I rightly understand you that you would leave the whole framing of the case to be submitted to the Court—to some officer of the Court?—Yes.

1862. Would not the decision very much turn upon the manner in which the case was stated?—Wholly upon it.

1863. (*Mr. Waddington.*) You mean that the parties should come before him, and that he should fix the points after hearing the parties?—Yes, I have made a little note upon it which will give my views more clearly. The officer of the Court should examine all complaints of infringement, point out objections, if any, to the validity of the case, or call for further particulars; particulars of breaches framed under his approval, in full knowledge of plaintiff's case, to be transmitted to the alleged infringer, and his answer thereto to be submitted to the officer of the Court. This answer to be amplified at the discretion of the officer; and further particulars from the plaintiff to be called for, if needed. The answer, when complete, to be defendant's case. With such particulars the officer of the Court to prepare case for trial. Points of law raised on case (if any), to be first selected, put into shape by the officer of the Court, with concurrence of litigants, and submitted for decision of the Court. If judgment is against the validity of the Patent, the case to be dismissed, if not, issues, embracing the merits of the case, to be prepared by the officer of the Court, and none other tried. Appeal may be made, before the trial, against officer of the Court's decision in respect of the issues. This is the view I have had for some years, but I have found recently that it perfectly agrees with a system carried out in Scotland. When I say carried out, it is embodied in an Act of Parliament, but whether it is carried out in practice or not is another matter. This Act, which relates only to Scotland (13 & 14 Vict. c. 36.), I am not at all inclined to think is really carried out in spirit, so far as Patent actions are concerned, because I feel certain there is not the machinery to do it there. It is by section 38 declared to be the duty of the Lord Ordinary to prepare the issues for trial. In a work on this matter, Macfarlane and Cleghorn, I find this statement: “It may and does frequently happen when a case is analysed, that contrary to the anticipations and views of both parties, there is truly no relevant matter for trial at all. When this occurs no issue can of course be granted, the parties being either at once sent out of court, or obliged to amend their pleadings. Or it may happen that, the parties being agreed on all the material facts, the hinging point is one purely and entirely of law.”

1864. (*Mr. Grove.*) Have you had any opportunity of judging of the working of that system?—No, I have not. I have looked into that book of Macfarlane and Cleghorn, and I am very much inclined to think that though the Act sets out the system which I have attempted to describe, it cannot be carried out, because there are not the means. The Lord Ordinary would not in Patent suits be qualified to do the work which it is proposed should be done.

1865. They may have found difficulties possibly in endeavouring to carry it out?—It is carried out in all other matters certainly on which the Act bears, but I do not think it can be carried out in Patent matters. The following is the clause which explains the procedure for the adjustment of issues: “Where in the course of any cause before the Court of Session matter of fact is to be determined, and an issue is to be adjusted with reference thereto, it shall be the duty of the pursuer to prepare and lodge in process the

" issue he proposes, and it shall be the duty of the
" defender to prepare and lodge in process any counter
" issue required by the nature of his defence, and the
" Lord Ordinary before whom such cause depends,
" after causing issues to be prepared and lodged as
" aforesaid, shall forthwith appoint parties to attend
" him at chambers, or shall order the case to the
" Roll, for the adjustment of an issue or issues for the
" trial of such cause, or of such matter of fact arising
" therein as is to be determined by jury trial; and if
" such issue or issues be not adjusted and settled with
" the consent of parties at the meeting or enrolment
" so fixed, or at a second such meeting or enrolment
" for the same purpose, if such second meeting or
" enrolment shall be appointed by the Lord Ordinary,
" the Lord Ordinary shall immediately report the
" matter to the inner house, by whom such issue or
" issues shall, upon such report, be adjusted and
" settled."

1866. (*Mr. Waddington.*) That is what is undertaken by Judges in chambers in England, as far as the preparation of the issues to be tried goes?—Yes, but it is a much more perfect thing.

1867. (*Mr. Grove.*) I daresay you have seen the length to which some Patent cases go in Scotland, are you able to form any opinion whether any time is saved by the issues being more elaborately adjusted, as contemplated by that Act?—I do not think so, for the reason which I have already given, namely, that I do not think the Lord Ordinary is competent to perform this duty; but the Act shows that there is a necessity, and it is only for that reason that I bring the Act before your notice. Nothing can be more unsatisfactory than the present system. I need only refer to a recent trial in which I was advising the defendants, and not until the second day of the trial did I know what the case was which I had to meet. It is a very unfair thing to defendants, and it is as often unfair to plaintiffs. Under the present system the merits of a case are first tried before a jury, and when the jury has decided, or at the time that the trial is going on, legal objections are taken to the Patent in question; the whole expense of the trial is incurred; the time of the Court is occupied for days; the jury is called upon to give a verdict, and when the verdict is given then and then only the real merits come forward, and the question, is the Patent valid or not, arises. The matter has then to be discussed and re-discussed before the Judges, and in many instances so far from the jury's duties having been of any avail, they are proved to have been waste time; because the Patent is shown to be invalid, and therefore all the time occupied by the trial, and the expenses incurred in bringing witnesses to speak upon the point, are of no avail. But supposing this system of a preliminary preparation of the case to be introduced, then I think we should get some great advantages. Another proposition I have made elsewhere, but which has been objected to, is, that if Patents are granted without investigation, which is the general wish, then the right to found actions on Patents should be controlled by a proper authority, as in the case of an application for a writ of scire facias, where it is in the power of the Attorney General to refuse the application. The advantages of the system which I proposed are these; first, groundless complaints will at once be dismissed; secondly, weak cases of complaint will be compromised, their weakness being demonstrated by the officer of the Court; thirdly, untenable cases will be withdrawn, the litigants being in full knowledge of the nature of the defence, and of the officer of the Court's opinion thereon; fourthly, the decision on the law points taking precedence, the chief expenses of the trial will be deferred until needed; fifthly, if the law points go against the plaintiff the case will be closed, and if against the defendant, the same result will be probable; sixthly, the labour of getting up and testing evidence in and out of Court will frequently be saved. These are the advantages which I think would accrue from this preliminary

examination of cases and the preparation of the issues to be tried. *A. V. Newton, Esq.*

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1868. (*Chairman.*) When the case had been prepared in the manner you suggest, would you have it tried as at present in one of the ordinary Courts of Law, and before a common jury, or would you provide a Court specially for the purpose?—I should propose a special Court.

1869. (*Mr. Hindmarch.*) With or without a jury?—Without a jury.

1870. (*Chairman.*) With assessors, or should the Judge sit alone, and decide upon his responsibility?—The Judge, I think, should decide on his own responsibility, but he should have advisers.

1871. Would you propose that they should be permanent advisers, or advisers summoned to give assistance to the Court on each particular case?—I think there might be a difficulty in the system of having advisers specially summoned; otherwise, perhaps, they would be the most desirable to have; but on the whole I should rather be in favour of having permanent scientific advisers.

1872. Who should be precluded from carrying on any business?—Yes.

1873. (*Lord Overstone.*) Would you propose that those advisers should be parties whom the Judge might consult or not, as he might think proper, or that their opinion should be always taken, and should be publicly declared before the Judge decided?—I think the chief use of those advisers would be to watch the case, and to bring out the facts. I think that unless there are some independent persons qualified to try the case, the whole facts do not come out, and are not understood.

1874. You think, then, that the advisers should be called upon to act, not leaving with the Judge the option of calling upon them?—Yes, I do.

1875. Would you have them give an opinion upon the whole case before the Judge decides?—If they did it should not be in public.

1876. You would not think it right that the advisers should publicly state their view, and that the Judge should afterwards decide?—No, I think not; I think the Judge should bear the burden of the decision.

1877. (*Mr. Fairbairn.*) Would you have those advisers employed exclusively in that duty?—Yes, I think so.

1878. (*Lord Overstone.*) In your opinion the Judge should have attached to him advisers permanently appointed, and who should consider it their duty to watch the progress of the case step by step, to make such suggestions as they might think expedient, and in the end that they should give an opinion upon the subject to the Judge upon his requisition?—I think that would be the best way in which scientific knowledge could be applied.

1879. That is in your judgment the way in which a tribunal for the trial of litigated Patents ought to be constituted?—Precisely.

1880. (*Mr. Fairbairn.*) Do not you think that if the Judge were to call in occasionally scientific advisers, merely to advise him on technical matters, that would answer the purpose, without appointing them permanently?—Though I think that permanent advisers would be better, I should not at all object to having this scientific assistance obtained in any way, but I should not like any Patent case to be left entirely to a legal mind to decide upon. I think that none but a legal mind is qualified to decide between complex cases, but I think that a man who is merely a legal man is not able to follow all the points which do or ought to come out in a Patent case, and I think that scientific men should assist in the trial of Patent cases in order, by their questions, to draw those points out if they were hanging back as it were, and put them before the Judge clearly.

1881. (*Lord Overstone.*) Your view I understand to be this, that the Judge is a properly qualified person to weigh and decide upon conflicting evidence, but that, in matters of scientific complexity, some

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further assistance is necessary to enable the Judge to draw out all the facts in the case?—Precisely.

1882. (*Mr. Waddington.*) You propose that the parties should argue the case before the tribunal you suggest, by themselves or by counsel, as they do now before a jury?—In that respect I think there should be no change.

1883. You would allow the advisers to take part in the examination of the witnesses?—Yes; I think that very important, in the same way, and only in the same way, that the judge at present does.

1884. (*Mr. Fairbairn.*) How many advisers do you think would be necessary?—I should say never more than three.

1885. One conversant with mechanics, another with chemistry?—Yes; and another with philosophical matters generally.

1886. (*Mr. Waddington.*) Do you mean that three should attend in every case?—Yes, it would be desirable; it would not be absolutely necessary, because the mechanical adviser, when a chemical case was on, would perhaps know little about it.

1887. (*Mr. Fairbairn.*) If you had such a body as you suggest, do not you think that the jury could be dispensed with altogether?—I would have no jury. I think juries of no use whatever; the Judge should be the jury.

1888. (*Lord Overstone.*) If the jury were got rid of, would not it be desirable to enable the Court, consisting of the Judge and the advisers, to adjourn, if necessary, for a further inquiry into any points upon which they might consider the evidence insufficient?—It would be opening a very wide field, for, if the case was not fit for trial, it should not be brought on.

1889. Have you never heard of cases which have been considered fit for trial, but which turned out not to be so when they were gone into and investigated; when it has turned out that there were some points upon which additional evidence might be required?—I think, if the case were prepared in the way I have suggested, any deficiency must necessarily be brought to notice before the case goes into Court.

1890. Passing on to the subject of licences where a Patentee has obtained a Patent, do you think he ought to be under compulsion to grant a licence for the use of it?—I think he should.

1891. Under what regulations would you place the granting of licences?—If it is made compulsory to grant them, and no agreement is come to between the person desiring the licence, and the Patentee, I think then that the Court (supposing the Court to have been established) might very well act in that matter.

1892. Do you think that the Court could be safely entrusted with the decision of what is the price which the Patentee ought to charge for the licence he grants?—I think so. One-third of the saving effected by an improvement has been deemed an equivalent price for its use. This is not applicable to new manufactures; in that case the terms of the licence are of little consequence to the Patentee, provided they are not too high and not exclusive. The lower the terms in general, the larger the gross amount realized. The Patent Law Court might be appealed to, the basis of settlement being that the licensee may be able to compete with the Patentee by selling at his fixed price of sale. If, for example, the Patentee sells the article at 20s., and charges 5s. as a licence fee, and the licensee can pay that fee, and get a reasonable profit on the manufacture, that would be a proof that the licence fee was not in excess; but if he could not manufacture at a fair profit and pay that licence fee, then the fee would be in excess.

1893. When you have once given a monopoly to a party, in the form of a Patent, why do you think that the ordinary principle of supply and demand which prevails in other things should be insufficient in that case to secure to the public the use of the article?—It is not for that reason that I should require compulsory licences. When a man has invented a good thing he opens the road to other inventors. A more far-seeing man, having his eyes directed in that way, sees

how he may improve on the original invention; but he says, "If I improve upon it I cannot manufacture my improvement, because that Patent stands in my way." And there, and there only, is the semblance of obstruction in Patents. Now he says to himself "If I can get the right to manufacture my invention, I can afford to pay a licence fee to the original Patentee; but if he is obstinate and will not grant me a licence, I shall lose where I might hope to gain, and the public cannot have the benefit of my improvement until this Patent has expired."

1894. A compulsory licence means a licence which the party possessing the monopoly must grant upon some terms dependent upon other considerations than those of free agreement between the purchaser and the seller. What substitute for that free agreement would you propose to establish for the purpose of determining the price of a compulsory licence?—If a man refuses to grant a licence, it does not follow that he secures to himself an advantage; he puts the man who requires the licence upon his mettle to get round that Patent, to evade it, and it is not unfrequent that a Patentee refusing to license will force a better thing into the market, and so really injure himself. Consequently, if the law compelled him to grant a licence, the law would not injure him in that case.

1895. But if a Patentee refusing to grant a licence is very liable to injure himself by that refusal, is not that a strong argument in favour of the plan of leaving such considerations to exercise their ordinary influence over him, and to induce him to sell his Patent upon some reasonable terms?—Not exactly, because a man who improves on the original invention can work with confidence when he knows that it is only a money payment which he will be called upon to make; but if he has the uncertainty of whether when he has perfected his improvement he shall be able to use it so long as the original Patent exists, then the question is whether he will pursue his improvement, and complete it.

1896. If you compelled a Patentee to grant a licence, would not it be necessary that that act should be accompanied with some decision as to the terms on which he is to grant it?—Yes, it would be.

1897. By what process or upon what principle do you propose that those terms should be settled?—I have given two schemes, both perfectly practicable, one is that the licence shall not exceed one-third of the benefit which the invention is supposed to confer, and the other is that the licensee after paying the licence dues shall be enabled to put upon the market the patented article at the same rate as the Patentee is now selling it.

1898. (*Mr. Fairbairn.*) Do you think that that system of compelling the Patentee to grant a licence on such terms would work well?—I think it would come to this, that if the law said a man shall not have the exclusive right of his invention (and the law does in fact say that, because the Government has a right to use everything that is patented, on a reasonable remuneration being paid, and that has never raised much difficulty yet), if a man knows that the power exists somewhere of insuring to any applicant a licence, then he will raise no difficulty whatever, and the terms will be adjusted.

1899. In some cases where a Patentee works a Patent himself it may be against his interest to grant licences at all; in other cases it might be the reverse, and it might be to his advantage to grant licences?—I think it is always to his benefit to grant them. Why I am rather strong upon this point is because I have seen so much folly in the refusal of licences. I introduced the sewing machine into this country. I sold it for a small sum, and I offered some years afterwards to the owner of the Patent as much licence money as 10l. per machine, and that was refused. I am now granting licences for a sewing machine (an improvement by the original inventor of that machine) where shillings are considered an equivalent for pounds in the first case; and I know that in the United States, where sewing machinery has thriven

more than here, very small royalties have produced enormous sums of money to the owners of Patents. Another case in which I was concerned some years ago well marks the folly of a Patentee in refusing a licence. A poor man invented and patented the making of "cock-spurs" (supports for dishes and plates while submitted to furnace heat) by means of dies, and established a small business upon the manufacture. Some years later a gentleman improved upon the invention so far as to make the cock-spurs 500 at a time instead of singly. The earlier Patent being brought to his notice he desired to make terms with the original inventor, and offered him a liberal sum, together with the sole right to sell the new manufacture in his own locality (the potteries). He could not, however, be brought to accept these, or indeed any terms; but contrary to advice commenced an action for the infringement, and was cast by reason of an unimportant claim in his specification proving untenable.

1900. (*Lord Overstone*.) Passing on to the next point, do you think it expedient that Patents should be granted to the importers of foreign inventions?—I think that it is a most important thing that they should be.

1901. Upon what principle do you think it important that that privilege should be granted?—If Patents were not granted for foreign inventions, we should shut out, I think I may say, three-fourths of the inventions which are brought here.

1902. Do you think that foreign inventions in active use abroad would not find their way into this country unless Patent privileges were granted as an encouragement for their introduction?—I know they would not, because I know of cases where inventions have been publicly used abroad, and are not even to this day used here. I gave an example in my evidence before the Committee in 1851, and I will give that same example again, after twelve additional years of foreign experience of the utility of the invention referred to; I allude to the American Excavator. It was patented here certainly, but the proprietorship of the Patent got into the hands of so many persons that it was not worth while for any one of those men, more especially as they were pulling against each other, to go to the expense of introducing it here. The machine was brought over, and it was even set to work on the Eastern Counties Railway and at other places, but the obstructions which it met with from the workmen were such that unless it had been in the hands of one man, and that a very energetic man, it could not succeed, and to this day it is not known in this country as a working machine. The American Derrick is another example of a very useful invention, being practically unknown in this country.

1903. You think there are many inventions a knowledge of which is perfectly possessed by persons in this country, but which unless a Patent right were granted to some person over them would not be brought into practical working?—Yes.

1904. That is a fact within your own knowledge?—Yes; I can give another example. There was an invention which I patented some 14 years ago for cleaning wheat. I believed it to be a process which was very valuable. It was said to be capable of increasing the yield of flour by 15 per cent.; that invention was applied in the United States, but through a series of misfortunes the inventor was never able to realise anything upon it, and I think that the war in the United States entirely destroyed his hopes. But with the hope of getting an extension of the Patent in this country, some of his friends came over here prepared to establish the process. While here they made terms with one of our largest millers, the terms being, that the miller was to be at the expense of applying for an extension of the Patent; that he was to have certain privileges under that extension; and then that the inventor was to do what he could with other millers. The terms were carried out, though unfortunately for the inventor the extension was not allowed; but the mere hope of securing this ex-

tension had the ultimate effect of introducing the invention into work in the largest mill in London. A Patent of improvement which was obtained prior to this application before the Privy Council for an extension still gives the inventor some slight hold on his invention, and, therefore, he is encouraged to pursue it; but if it were not for that Patent the invention would only be used in the mill in which it now is working, for the inducement would not exist for the inventor to push it under the notice of any other miller. That, to my mind, is a case, and a very strong case, of the utility of granting Patents for foreign inventions, because that invention was well known from the enrolled specification for 14 years and yet no attempt whatever was made by the trade, although tempted by liberal offers, to carry it out here. It is said, and I believe there is no doubt about it at all, that the saving effected by this process of unbranning wheat, whereby the bran is removed without the slightest particle of flour, is 15 per cent. The hope of an extension of the Patent was enough to bring parties from the United States to establish that invention here.

1905. (*Lord Overstone*.) With reference to the law respecting prolongation and confirmation, do you think that the present state of the law upon the subject of prolongation is satisfactory, or, if not, in what respect do you think it unsatisfactory?—I think the state of the law is satisfactory, but I should like to see a different Court applying the law.

1906. You think that the Privy Council, as it at present works, is not a good tribunal to decide questions of prolongation?—No; it is a matter of trade policy; it is a question almost of political economy, and certainly not a matter for a Court consisting purely of lawyers.

1907. Is not the question of prolongation a simple question of fact, to what extent the Patentee has been remunerated for his invention, or to what extent the sale of his article up to that time has not been sufficient to remunerate him?—If it were merely that, there would be no objection to the Court as it now stands, but, from what I can judge of their proceedings, the questions seem to be decided upon hard crude law rather than upon policy. I think that the question as to the extension of Patents is a question of policy entirely.

1908. Is the question which they have to decide anything more than the question of whether the Patentee has, up to the period at which the Patent expires, received the remuneration which it may be fairly presumed, in granting the Patent, it was deemed right that he should receive?—I think that there are certain elements which ought to be taken into consideration that are now not considered at all. I think, for example, that if it could be shown that a man might have profited by his Patent if he had gone a reasonable way to work, if he had not refused offers made him, and that by his own misjudgment he had marred his prospects, that would be a legitimate ground for refusing an extension; but I think that if a man has not worked his Patent at all, and he can show some reasonable ground for not having done so—if, for example, it was before its time, and he would only have wasted his time in pushing the thing, and spending money upon it, then he should have a right to an extension, provided he could show that now is the time when the Patent can be made profitable.

1909. Do I correctly understand your opinion to be that the objection to granting of prolongations by the Privy Council is an objection to the principles upon which they decide those questions?—It is difficult to say upon what principle they do decide, because they certainly consider whether a man has had a sufficient remuneration; but I think they have no means of judging what is a sufficient remuneration. Now, in the United States, when Patents were extended (recently that plan has been abolished), proof was required of the amount of benefit which the public had derived from the Patent. If it could be shown that the advantage was enormous, and that the Patentee's profits, though large, were not equal to that, or were

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considerably below it, then one might confidently predict an extension of that Patent. That plan has been recently altered; but here, if a profit is shown of some few thousands of pounds on the workings of 14 years, there is scarcely any prospect whatever of an extension.

1910. By what change of tribunal, not involving a change in the actual state of the law, do you contemplate correcting and removing the objections which you now urge against the decisions of the Privy Council?—By submitting those applications to the consideration of the new tribunal which I suggest, of Judge and advisers.

1911. Upon what ground would you expect that the new tribunal would take a different view, or a more correct view on the question, than the existing tribunal?—Because they would be intimately acquainted with matters of that kind.

1912. You would refer questions of prolongation to the same tribunal as that to which you would refer the decision of litigated Patents?—Yes.

1913. Why do you think that that would be a better tribunal than the Privy Council?—One great advantage would be, that there would always be the same individuals composing that tribunal. The Judge, at any rate, would be the same; but in the Privy Council you might get a Court which was tolerably intimate with these matters at one time, and at another time you would get Privy Councillors who knew very little or nothing about them.

1914. (*Mr. Fairbairn.*) You think that the new tribunal that would be constituted, being better acquainted with the Patent Laws, and the working of the Patent Laws, would be more competent to judge in cases of prolongation than the Privy Council?—Precisely so.

1915. (*Lord Overstone.*) Do you see any objection to abolishing altogether the system of prolongation?—I do not think it should be abolished.

1916. You think that the system of granting prolongation should be maintained, but that the adjudication of the subject should be referred to a different tribunal; and you would suggest that it should be referred to the tribunal which had to consider the question of litigated Patents?—Yes; I think that would be a great improvement. I think with respect to confirmations, if the law is not sufficiently strong upon that point, and I think it is, confirmations also ought to be submitted to this new tribunal; for such is the practice in the Privy Council, that we have had, I think, but one confirmation of a Patent since the passing of the Act, although the privilege conferred by the Act is a very equitable one.

1917. (*Mr. Fairbairn.*) You would have this new tribunal take cognizance of every matter connected with Patents?—Yes; everything connected with Patents.

1918. Both prolongations and confirmations and everything else?—Yes; I think that that would be very desirable.

1919. (*Mr. Waddington.*) Have you considered the law with respect to disclaimers?—I have considered that matter a great deal, and I think that a system which now prevails in the United States would be a most desirable system to import here. By our system if we have a defective specification, we strive to amend it by striking out portions which are descriptions and claims of parts which are not new, and which if they remained would vitiate that which is really new. If the description is incorrect in certain small matters it can be corrected; but in the United States something more is allowed than that. If I draw a machine, and I describe that machine, and I claim portions of it, and if I choose afterwards at any time to re-consider my description, I can put in a new specification, claiming things that are there described, and by that means I am enabled to substitute a good specification for a bad one.

1920. By making additions to your first specification?—It is not an addition; it is a new document.

1921. A new document varying from the original

one not only by the omission of part, but also by the addition of part?—No, that is not it; if the machine is shown in the drawings and described, then I can, according to the United States system, make a claim upon anything I please that is there shown and described, though in the original specification that claim were wanting.

1922. You do make an addition to your claim?—Yes; but no change whatever in the invention.

1923. You claim something as a novelty which you did not claim in your first specification?—Yes. I had a case submitted to me some time ago where the description given wrongly set out the principle of action, and the claim unfortunately embraced this wrong principle; but there was the invention clearly set out, and under our present law of disclaimer there is no means of making that a valid Patent. Now under the American system that specification could have been withdrawn and a new specification filed, that being subject to the approval of the examiners. Such a privilege as that should not be accorded at all unless there were proper persons to examine and pass the specification.

1924. (*Lord Overstone.*) Will you state exactly what alteration you would propose to make in the present state of the law as regards disclaimers and memoranda of alterations?—I think that not only should a disclaimer or alteration be allowed, but that a Specification might be withdrawn and a new one substituted.

1925. To what extent would you permit the new Specification to differ from the old one?—The new one should lie as it were within the four corners of the original Specification. Supposing, for example, I invent a new construction of heckling machine, and claim a mode of driving the heckle sheets, and in the first instance content myself with that; but supposing I have in my Specification described and shown a new construction of heckle, then I think if there has been no claim set up by me for that, a new Specification, containing a claim for that portion, should be admissible as a substitute for the original Specification.

1926. (*Mr. Hindmarch.*) Whether any other person had used that heckle in the meantime, or not?—Yes.

1927. (*Mr. Grove.*) You would take away what the public upon your original Specification had been lawfully and rightfully using. So that it might happen that a Patent might go on for 13 years and the public be in full possession and use of the invention legally, and yet by an alteration in the Specification, if I understand you, you would stop them?—You might fix a limit, it would be desirable to impose a limit, beyond which if a man infringed that portion he should not be liable for damages for the act.

1928. The public may have adapted plant and made arrangements for the thing, and they would have a right to presume that no alteration will be made?—I have given that example because it is an extremely simple one, but it would hardly be such an example as would occur; I merely gave it as it arose. But what I have in my mind is what I set out with, namely, a claim having been made on a wrongly ascertained principle of action of a machine, or a process. If, for example, I say that I claim the oxydising of such a material and describe the process correctly, saying, I put such and such a material into a certain solution and thereby effect its oxydation, and if I claim the oxydation of that material and it turns out that that material is not oxydised at all, I think that is a ground for putting in a new Specification: that is perhaps, a far better example than the heckling machine.

1929. (*Mr. Hindmarch.*) Supposing that the inventor specifies something which is no invention at all, you would allow him to amend his specification by claiming something which is an invention?—No.

1930. Is not that the result of what you have said?—No. A patent is granted for an invention. That invention is described and claimed. It is wrongly claimed. I merely ask for the right to put in a proper specification for that invention which is there set out.

1931. Is not there a fallacy in the use of the expression "it is wrongly claimed;" is not rather the proper expression "the wrong thing is claimed"?—No, not necessarily; it may be so.

1932. (*Lord Overstone.*) If I understood you correctly, your view is this; a specification is made of some result accomplished. That is the merit of the supposed discovery. The specification describes the result, and attributes it to a certain cause or to certain processes, but it is subsequently found out that though the result is correctly described, the cause or processes by which it has been obtained have been incorrectly described, and you propose to give the power of introducing a correct description of the means by which that result has been obtained; is that your view?—Yes.

1933. You think that that is really following out the original Patent in spirit, and that it is not the establishment of a new case?—Yes; it is a thing which works very well in the United States. I have never heard any objection urged against it. They call it the re-issue of the Patent. The words of the Act referring to this point are these: "Whenever any Patent which has heretofore been granted, or

"which shall hereafter be granted, shall be inoperative or invalid, by reason of a defective or insufficient specification, or by reason of the Patentee claiming in his specification, as his own invention, more than he had or shall have a right to claim as new, if the error has or shall have arisen by inadvertency, accident, or mistake, and without any fraudulent or deceptive intention, it shall be lawful for the Commissioner, upon the surrender to him of such Patent * * * to cause a new Patent to be issued to the said inventor for the same invention, for the residue of the period then unexpired for which the original Patent was granted, in accordance with the Patentee's corrected description and specification." I may remark, in corroboration of the utility of this provision of the United States law, that in a bill now before the Canadian legislature for improving the law relating to the granting of Letters Patents it is embodied, and in almost the same words as those just recited.

1934. (*Lord Overstone.*) Is there anything else which you wish to submit to the consideration of the Commission?—I do not call to mind any other points just now.

The witness withdrew.

Adjourned to Thursday next at 4 o'clock.

Thursday, 21st May 1863.

PRESENT:

The Right Hon. LORD STANLEY, M.P.
The Right Hon. LORD OVERSTONE.
The Right Hon. SIR WILLIAM ERLE.
HORATIO WADDINGTON, ESQ.

W. R. GROVE, ESQ., Q.C.
W. M. HINDMARCH, ESQ., Q.C.
WILLIAM FAIRBAIRN, ESQ.

THE RIGHT HON. LORD STANLEY IN THE CHAIR.

ROBERT ANDREW MACFIE, Esq., examined.

1935. (*Chairman.*) You have had a good deal of practical experience of the working of the Patent Law?—I ought to have, for I have been engaged in business as a manufacturer, in connexion with my father and other members of our family, from the year 1829. For three years I was in Glasgow as agent for a bank, but even then I was connected with the sugar trade. Since 1829 I have been engaged in refining sugar.

1936. Have you taken out Patents yourself?—When our firm was in negotiation for the use of a Patent I applied personally for leave to take out a Patent, but as it was not necessary for the object in view to complete it, upon coming to terms I withdrew my application.

1937. Have you been interfered with in your business by the Patents of other persons?—We had trouble on one occasion with a Patentee, whose Patent we were, unconsciously, infringing. On being told so, we offered 1,000*l.* for a licence, which was refused. We then altered our apparatus at no small expense, causing us also some loss of time, and though the Patent has been for years expired, we have not, even in other apparatus that we have since fitted up to a considerable extent, adopted the patented principle.

1938. You have received a list of printed questions forwarded by the Commissioners, and you have sent answers to them?—Our firm has done so.

1939. It is your opinion, I see, that the expense of taking out Patents is at present rather too small than too great?—Yes, anything that tends to multiply Patents seems to me to multiply difficulties to manufacturers, but if any amelioration could be made in the law, by which those difficulties could be got rid of, I would have no objection to any number of rewards for the benefit of Patentees.

1940. It is your opinion that the cost of taking out a Patent at present, is not good in itself, but that it is a check upon a great abuse, namely, the multiplica-

tion of useless Patents?—That is the only advantage.

1941. You lay some stress upon the importance of a preliminary inquiry, have you considered how far it would be possible to make such an inquiry really effective? This difficulty arises, that the applicant would have every means of proving his case, while there would be probably no one to represent the interests of the public. Have you considered how that could be met?—The inquiries on which our answers lay stress are those that in our judgment should be made by the applicant. He ought to make thorough search to satisfy himself, and warrant the conclusion, that what he patents is novel. The difficulty which your Lordship suggests at the close of your question, I feel to be a serious one. That which is everybody's business is no nobody's; and unless there was an advocate of the public interests, I am afraid that the public would, in most cases, suffer. I have seen a suggestion made in a French pamphlet, which I read last year, that when a Patent was applied for, if the question of novelty was raised, it should be determined by referring the point to a number of experts, men of business connected with the particular manufacture.

1942. (*Mr. Hindmarch.*) Would it not be difficult to get impartial persons to perform such an office?—The pamphlet recommended that the parties should be asked, "Is this, so far as you know, new?" It was proposed that the parties so acting should be the persons most largely engaged in that particular branch of manufacture the invention to be patented affects. For instance, if it was a Patent in our business, for a particular mode of sugar-refining; anyone could without difficulty name two or three houses who would be competent to perform the duty; if they had never heard of this particular mode of refining, it might be assumed to be new.

1943. (*Chairman.*) Would you limit the prelimi-

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nary inquiry to the question of novelty, or extend it also to that of utility and importance?—I do not pretend to offer suggestions upon details. My thoughts have mostly gone upon principles. If a good system of Patents could be advised, I think it an advantage that any idea whatever might be registered, because out of a great deal of straw we might be able to get some grains of wheat.

1944. This is a question of principle, whether, assuming that there is to be a preliminary inquiry of any kind, that inquiry should be directed merely to ascertain the plain matter of fact whether such an invention as that for which the patent is asked has been placed on record before, or whether such inquiry should be extended to the much wider question of the actual merit of the invention proposed to be patented, and to the question whether it deserves to be patented?—It is very difficult to say what would be a trivial or frivolous or trumpery patent, therefore I would much prefer that, if possible, some system should be devised by which anybody could innocuously register his ideas. The only thing which I care for, speaking as representing a large class, is to get quit of the annoyance which patents are calculated to give us as manufacturers.

1945. (*Lord Overstone*.) Do you find by actual experience that that annoyance is serious?—I cannot say that we have found it so. That is a thing which surprises me very much, but if there should be a reform of the laws which would multiply patents, and which would invest Patentees with increased power, the state of matters might become very troublesome.

1946. That anticipation is not founded on past experience and derived from actual knowledge?—On the contrary, I would say that Patentees in nine cases out of ten in the sugar trade neglect their inventions; they do not often come and submit them to us and say, “Here are the results of what we have patented, will you work our invention.” We hear very little about them, or from them. It is a small number of patents which we have had practically to do with. The misfortune, however, is that in those cases we have had to pay tremendous sums. There was one case in particular in which we had to pay 1s. a cwt. That on the present value of sugar would be a very heavy tax. We bought, for instance, the last week or two, cargoes of sugar at from 15s. 10½d. and 16s. per cwt. A shilling upon that, (and that has been frequently demanded) would be a preposterous tax.

1947. Do I understand you correctly that your experience in the sugar trade does not lead you to say that the multiplication of useless Patents in existence creates inconvenience and embarrassment in the prosecution of your trade?—I wish to give the answer as bluntly as I can. Though they might be expected to be an annoyance to us they are not, but any day they might become so. Judging from the reason of the case, one would say that they are mischievous. I know that they must be, and yet as a matter of fact Patentees have patented things of so little value, and they have so neglected to push their business, thereby saving us the trouble of satisfying them by proof that there is no use being made of their inventions, that we have not found the multiplicity of Patents a great inconvenience.

1948. (*Mr. Grove*.) Do you know whether in the case of other manufacturers who are engaged in manufactures in which numerous mechanical patents have been taken out, the number of Patents is found substantially to be a grievance?—Having been connected with one business only all my life I cannot say. In our business we have not felt it to be a great hindrance, but we have had very large sums to pay, and we have had very large sums asked us, for the use of Patents. We have tried inventions and have not found it necessary to adopt them, and therefore we have not in those cases paid the large sums asked. It is common for persons in our trade to be asked a rate of royalty that would amount in our individual case to 20,000*l.* a year, or it might be in the case of a certain notable house 50,000*l.* a year. It is im-

possible for the British manufacturer to compete with foreigners if he has any such sum to pay. It is most unjust.

1949. Your business may be one in which useful Patents are not very numerous, but you may probably be acquainted with persons in other manufactures, who have complained about their being interfered with by Patents and threats by Patentees?—We have ourselves had annoyances in one case from a Patentee, and I suppose that others must be annoyed too, but as a general rule I do not think that Patentees hitherto have acted grievously.

1950. (*Chairman*.) What you are looking to I apprehend is this, you think that in the event of a change of the law taking place which would greatly diminish the cost of taking out Patents, in that case patents would be multiplied, and then they would become a serious annoyance?—Yes, quite so. In fact, already they are numerous, and in answer to Mr. Grove’s question with respect to our trade not being the subject of many Patents, I may say that I went to the library of the Patent Office to-day, and I found that in 1862 there were 22 Patents for sugar and 7 for animal charcoal, the two trades being necessarily combined. In the year 1861 there were 22 Patents for sugar and 5 or 6 for animal charcoal. In the year 1860 there were 26 for sugar and 5 for charcoal. In 1859 there were 36 for sugar and 4 for charcoal. In 1858 there were 17 for sugar and 6 for charcoal. In 1857 there were 17 for sugar and 5 for charcoal, and in 1856 there were 23 for sugar and 2 for charcoal. I went no further back. I likewise ascertained how many there were up to the time when Patents were cheapened. I found that from the initiation of the Patent system up to 1701 there were 3 Patents, for the next 50 years 1 Patent, for the next 50 years 12 patents, for the next 25 years 35 Patents, and for the remainder of the term of the old patent law, about 26 years, 138, making from the commencement of the system 189 altogether. Judging from the numbers for the last 5 or 6 years, which I have already given, I infer that altogether there must be 300 or I may pretty safely say something like 400 Patents in force just now affecting the sugar trade, being probably double the entire number of Sugar Patents which were granted up to the time of the cheapening of Patents.

1951. (*Mr. Fairbairn*.) Have you ascertained how many of those have become useful Patents?—About half a dozen I should say of the Patents granted in the last 10 years.

1952. (*Lord Overstone*.) Of all the Patents which you have enumerated, how many do you make use of in the prosecution of your business?—I doubt if we make use of a single one.

1953. There being 400 Patents affecting your trade now alive and none of which you make use of, are you seriously embarrassed in any way by the existence of those Patents?—I do not think that we use a single Patent taken out since the cheapening of Patents. I may make this qualification. An individual has patented in his own name one or two things which he learned by executing a piece of work to our order and has therefore patented what we consider our ideas, but it is not worth our while to go to him and say, “You have no right to patent this.”

1954. There being 400 Patents now in existence affecting your trade, none of which are made use of by you, do you find that the existence of those Patent rights creates impediment and interruption and inconvenience, in the prosecution of your business?—Not in the smallest degree, but if Patentees were troublesome as they might become under a change of the law, and with a better organization, we should find our business so uncomfortable that it would be almost necessary to retire from it. Every one of those parties might come and allege that we were infringing some Patent and might bring us before a Court, as that person did to whom I have referred.

1955. You spoke of the exorbitant sums asked from you for the use of Patents such as 20,000*l.*

What is the largest sum that you have ever paid for the use of a Patent?—The largest sum that we ever paid for the use of a Patent was for Howard's Patent. We then paid 1s. a hundredweight. I have made a list of a number of parties who asked as much or still more from us.

1956. The object of my question is to ascertain not so much the sums asked as the sums actually paid for the use of Patents?—The sums actually paid are very large when the Patents are worth anything, but so few Patents are worth anything that we have not often to pay. The result which generally takes place is this—owing to the large sum asked, manufacturers do not use them. The use of the centrifugal Patent for cleansing sugar by centrifugal force was retarded by the large demand of the parties. We made terms with them at an early stage, and therefore we paid but a small sum compared with the sum which was demanded from others. We have continued to use that invention, one which is revolutionizing the trade all over the world.

1957. Do you think that sums of such a magnitude are ever paid for the use of Patents as to constitute a heavy tax upon the article?—There are constantly in all trades important improvements being made. That is the case in our own trade. Perhaps there is no trade more open to improvement than our own; and therefore I am quite certain that a day is coming when we shall have Patents which we require to use, as in time past there have been such Patents. The monopoly gives such power to the Patentee to demand a large sum from us that we must yield to his demand, but we have no assurance that our rivals abroad have any royalties of equal amount, or even any royalty at all, on the goods they send to the British market made according to the particular invention; and every one knows that the Custom-house will not impose any charge on importation to counterbalance the advantage of exemption from, or lower rate of, royalty. The result is that we shall be exposed to competition with other sugar makers and refiners, who will not have to pay what we must have to pay annually. I may say that a few years ago the British colonies were excluded from British Patents. An influential gentleman connected with the West India Association was shrewd enough to see that the sugar colonies would by such an exclusion get the full use of Patents for which we at home have to pay, and he prevailed on the Legislature to alter the law accordingly, reserving to the colonies the power of granting Patents or not as they chose. The result is that the colonists are making use of inventions for which we pay—inventions published for their or the world's benefit, under the promise or stimulus of a right to tax us; they are among the parties with whom we have to compete. So with reference to the continent, we have no assurance that the persons who do patent inventions on the continent will charge our rivals there the same as we have to pay. On the contrary, the law does not even require them to give the use of their Patents in the United Kingdom on any terms at all. If, for instance, a Frenchman had a very important sugar invention, he might take it out in Great Britain, and he might say, "Not a single British sugar refiner shall have the use of this Patent."

1958. Laying aside anticipations and apprehensions, can you state to the Commission any specific case in which the charge made for the use of a Patent in England has had the effect of checking that process in England to the benefit of persons using the same process abroad not subject to that charge?—It is extraordinary how little knowledge there is among men of business of what is going on elsewhere, or even among their neighbours, and therefore my inability to answer the question in the affirmative is hardly a proof that in many cases it may not be so. I am anxious rather to state this broad principle, that the present state of the law gives foreigners and colonists an advantage over British manufacturers, and that the sums which have been demanded of us and have been

paid by us, and may again be demanded from us and be paid by us, are such as tend to overwhelm our trade, and transfer it, in a great measure, to foreign countries.

1959. That is your apprehension, but you are not prepared to state any positive case in which that apprehension has been verified in practice?—It is a common thing for a refinery to refine 5,000 tons, and not quite uncommon to refine from 10,000 to 20,000 tons a year. 1*l.* a ton is a charge very frequently made by inventors. If their inventions had been worth anything, we would have required to pay that 1*l.* a ton. We might be obliged to pay several parties a royalty of that amount. The duty on brown sugar is 12*s.* 8*d.* a hundredweight, that is, 12*l.* 13*s.* 4*d.* a ton, so that the following would be the state of matters; we should be paying not only the customs duty to the State, but a large duty to the Patentee equal to probably 10 per cent. or 20 per cent. of the customs duty, and therefore constituting to that extent a protection in favour of foreigners, not a protection in favour of our own country.

1960. (*Mr. Fairbairn.*) Do not those excessive demands on the part of patentees operate injuriously to your particular trade when the demands are extravagant?—When we pay them they do, and any day we are liable to have to pay them, and we have paid them in time past.

1961. Have you paid more than one Patentee at a time?—Ours is a very complicated business. We have not merely the ordinary Patents to pay for steam engines and for economising fuel, and so forth, but a number of chemical and mechanical Patents applicable to sugar specially; for a number of those we have been asked from 1*s.* to 3*s.* a hundredweight, and we may have to pay any day three of them simultaneously.

1962. (*Lord Overstone.*) Do you think that it would be an advantage to abolish the Patent Laws altogether in this country?—I should like that exceedingly, but I have no such aim, and I have very little hope of seeing it.

1963. The injury of which you complain, namely, being compelled under the Patent Laws to pay a large duty in this country from which the foreigner is exempt, would only be met by the actual abolition of the present Patentees' rights?—By the abolition of the present system, but if the Commission will allow me I may mention two ways in which the difficulties that I have stated might be mitigated, by one of which ways indeed they would be entirely removed. The first is the proposition of the Liverpool sugar refiners. At a meeting of our trade we adopted certain resolutions which I had the honour of sending to this Commission. Our proposition was that every Patent affecting our trade should be valued at some early time, or say, within three years, that for three years the patentee should have a monopoly, and that after three years the Patent should be cancelled as soon as the parties subject to the payment of fees would make up the valuation price or as soon as the various fees or royalties which they have paid should amount in the aggregate to the valuation sum. The other proposition is, that the Chancellor of the Exchequer should be empowered annually to put at the disposal of the Patentees for the previous year a large sum for them to distribute by a committee of their own among themselves, so that the nation should in fact purchase every invention which any inventor thought proper to make known; a monopoly might, however, be conceded for a short time, say three years, to give the inventor a start.

1964. (*Chairman.*) Putting aside the latter alternative for the moment, and taking the former, do you think that it would be possible to ascertain the mercantile value of the Patent, that is to say, its value to the owner, within the first three years after it is taken out?—I have no hesitation in thinking it is possible. There might be differences of opinion as to the principle upon which the valuation should be made. I would not take into account the maximum profit

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to himself which the Patentee might realize by granting licences under the monopoly system; but the question should be, what is a fair remuneration, taking into account the cleverness of the invention, and perhaps also the expense incurred in perfecting it, and the advantage to persons using it.

1965. If I understand you rightly, that would not be a valuation of the Patent, because such a valuation would proceed on an estimate of the worth of it to the owner. You propose something different, namely, a certain reward, fixed upon wholly different principles, to be given to the Patentee in lieu of the Patent?—Very much so. I propose, in fact, a valuation of the invention rather than of the Patent.

1966. Do you think that it would be possible to fix the value of any invention in a manner which would prevent endless complaints and objections, or inequality and injustice?—I think it would be. I see no difficulty whatever, that may not be overcome, in carrying out the proposition of the sugar refiners.

1967. (*Lord Overstone.*) What test and standard would you use for the purpose of ascertaining the value of an invention before it could be brought into practical use?—I would allow the party three years' monopoly, and his experience during those three years would, I think, be a perfectly sufficient test and standard.

1968. Are not the cases numerous in which an invention, ultimately proving useful to the public and valuable to the Patentee, has failed altogether to develop its utility or value during the first three years of its existence?—No doubt; but in such exceptional cases I think it would be quite fair that Patentees should have the right to postpone the time of valuing, the public, nevertheless, after the three years, enjoying freely the use of the Patent.

1969. (*Mr. Grove.*) Have you not observed that the more valuable an invention is the longer is the time which it takes to bring it to bear; because the more valuable it is the more is it likely to oppose existing trade interests, and to require new plant and machinery, so that the more valuable inventions do not come into operation for several years?—I doubt whether the value of an invention has any relation to the period when it comes into use. I do not think that my experience bears that out; but my answer perhaps should be framed to apply to another sense of the term value. You probably by value mean the revenue or profit which under a monopoly a Patentee may receive.

1970. No, I would rather exclude that. I will explain my idea of value. You might have a small patent, for example, a new boot heel which might be extremely profitable, and which might come into use at once, because anybody could screw on a boot heel and improve a boot by paying a trifling royalty, and yet that trifling royalty might give an enormous payment to the Patentee. On the other hand you might have a class of inventions, such as a change in the metallurgic process by which you might extract copper or zinc at a cheaper rate; but there you would have to change the existing zinc or copper smelters works, and you could not do that probably in 14 years. That I should call an invention of the class to which I was referring. I ask you whether those Patents do not take a great many years to develop substantially?—I do not think that to bring an invention into actual use requires a very long time. I think that a few months is sufficient. To allow the Patentee three years I think would be more than sufficient time for him to prove to his own satisfaction and that of the inspectors the value of his plan.

1971. Would he prove it to the trade so that a third person should be satisfied of the value of his invention?—I think so.

1972. (*Mr. Waddington.*) Whom would you have to settle the value ultimately?—The Government, the Board of Trade perhaps, might fairly be trusted to appoint valuers.

1973. Do you think that that option of buying up an invention, which was your first proposition, would be

likely to be acted upon extensively?—In our trade universally.

1974. (*Mr. Fairbairn.*) Would it not be difficult to ascertain the value of a Patent in such a limited period as three years?—I can only speak of our own trade, but I see no difficulty in doing it in a much shorter time than three years. Such a case as the Howard vacuum pan I would make an exception, but I would allow in all cases where a particular inventor preferred it that the valuation of his invention should be postponed.

1975. Do you not think that under a very rigid and stringent examination by proper persons, thoroughly acquainted with the subject of the application of Patents, you would get rid of a great number of those frivolous Patents and so confer benefit upon the public?—Judging from our own trade I would not like myself to incur the responsibility of saying, with regard to a great many inventions, which are perhaps very trifling, that they are absolutely useless or hopeless.

1976. Are there not some of those inventions of scarcely any value which hang over you at times in your particular trade, and which the inventor maintains may be useful?—We have been very little troubled in that way, perhaps we occupy a favourable position with regard to that. All I can say is that there are innumerable cases in which troublesome people might come and give us trouble.

1977. (*Sir W. Erle.*) Is it easy for a stranger to ascertain the processes which you use in your manufactory. If a Patentee thought that you used his idea could he go to your manufactory and satisfy himself?—We would not allow him to come in, and supposing that he came in it would be difficult for him to see what our processes are and whether we are doing anything that might be infringements of Patented processes. It would be often almost impossible to detect them. To prevent misconception let me state that our principle has been to use no Patent without going to the Patentees.

1978. Supposing that I suspected you of using my Patented idea, could I watch you in the conduct of your business, or would you desire me to leave your premises?—We would not permit you, we would say—"You cannot get in."

1979. If Patentees have no means of ascertaining whether their idea is made use of in your manufactory I should presume that you would not be troubled by them?—I am not aware that we are using any of those 400 Patents. I should think that we are not. Our way is to go to the Patentees when we wish to make use of Patents and to treat with them. But the Patentees have always the power of ascertaining whether an invention is used or not, in this way. They can put a large bill in the neighbourhood of any manufactory saying that such a thing has been Patented and offering a reward of 100*l.* to any workman giving information of its use by any firm who are not paying for a licence. If that were done they could get from the working men the facts of the case, and there could be no evasions.

1980. Is there no such thing as combination among the workmen so that one who infringes the rules of the body is marked and ruined?—Not in our trade at all. Any man who knows anything of what is going on could not be challenged, it would not be even known if he was telling it.

1981. (*Chairman.*) Has it ever occurred to manufacturers to form associations among themselves for mutual defence against frivolous Patents?—I think not. What is everybody's business is nobody's. The manufacturers of this country are very neglectful in these matters. I do not think that there is much combination among manufacturers.

1982. I understand the plan proposed by the Liverpool sugar refiners to be this—that a Patent may be allowed to remain in force for three years, that at the end of that time it is to cease and that the inventor is to be remunerated by the trade using his Patent, the price to be paid being fixed by the Board of Trade

or some Government officer?—The system proposed by the Liverpool sugar refiners contemplated a valuation and an extinction of the privileges as soon as the price stated in the valuation is made up either from a common purse or from royalties paid.

1983. Would not that system imply a greater degree of combination among the manufacturers than has ever existed for such purposes?—So far as it was to be paid from a fund among themselves it would involve combination, but so far as it was to be made up from the royalties which they had severally paid it would not imply any combination properly so called.

1984. (*Mr. Grove.*) Would not that involve a somewhat elaborate inquiry. Taking the number of Patents in this country as 3,000 or 4,000 a year, and limiting it to useful Patents, would not it involve an elaborate inquiry and some trouble to ascertain what was the fair assessable value of the Patent at which the royalties should cease?—Perhaps it might be modified in this way, that the valuation should not be made till the parties paying royalty demanded that it should be valued. That would reduce the number of cases to the few in which it would be demanded. It would be only in a large trade such as our own that the demand would be made.

1985. (*Mr. Hindmarch.*) Would not it create a great deal of expense and require elaborate machinery to ascertain the collective amount of all those royalties?—I do not think so, I would just require that a Patentee or Assignee of a Patent should keep a record of the amounts which he has received for the use of his Patent from other parties. If any party had paid him a sum as royalty, and if it were not to be found in his books I think that improper absence of it from the account would be a strong ground for denying him the remuneration.

1986. Suppose a case, which is very common, that two Patentees having Patents for inventions relating to the same trade exchange licences. Of course no licence duties are paid by the one to the other. How would you deal with a case of that sort?—That is a question which I am not prepared to answer, but supposing that that were left out of calculation altogether, I do not think that it would be material.

1987. (*Lord Overstone.*) The whole object of your plan is to diminish the sum which parties pay for the use of a Patented invention?—That is the great object; I have stated that we are repeatedly asked, under the monopoly powers which the Patent Laws give, 1*l.* per ton. Our trade is one of those that are conducted with a small margin, compared with many others. At one per cent. profit we are remunerated. If we pay five per cent. to the Patentee where is our one per cent profit?

1988. Are the Commission to understand that it is your opinion that the trade of this country cannot now afford the expense to which it is subjected by the charge involved in Patent rights?—It is hard, or impossible for British manufacturers to compete with others who may not be so burdened; many trades may be able to do so, but as a general rule it is unfair and hurtful, and in some cases it will extinguish trades.

1989. You do not state any practical instance in which that impossibility of the English merchant to compete has exhibited itself?—The number of years is small since free trade was introduced; till free trade was introduced the difficulty did not arise. It is clear that if before that we had a protection of say 50 per cent. we could stand, say 20 per cent., for Patent royalties.

1990. (*Mr. Hindmarch.*) I understood you to say a few minutes ago that you think a bare profit of one per cent. sufficient?—No, not sufficient—remunerative; at that we would be content to carry on our own business. Manufacturers have to pay their licence fees when they are carrying their business on at a loss.

1991. And therefore you object to pay a licence fee of the description which you mentioned; would you ever pay that licence fee unless you obtained some commensurate advantage, I mean an advantage en-

abling you to get your one per cent., and perhaps something more?—You state the case clearly, but unfortunately the Customs have no authority or power to impose a duty on articles imported corresponding to the fee or duty that we have to pay to the Patentee. The result is, that the importer has an advantage over us which may gradually lead to the transference of important manufactures from our own country to the continent or the colonies.

1992. Your objection is, if I understand it rightly, that you cannot compete with colonists and with foreigners?—Exactly.

1993. Have you found that to be the case in actual practice?—We know that it must be the case; it is as clear as that two and two make four that, if we are to pay what others have not to pay, we are weighted to our disadvantage; there is a differential tax levied by our own country, and cruelly so, to our prejudice.

1994. You have been telling us something about the sugar trade; therefore, I presume that you are familiar with the processes used in the manufacture in Jamaica and in other sugar producing colonies?—Yes.

1995. Are you not aware that the manufacturers are a very great deal behind the time in other places as to their capacity to manufacture, and as to the description of apparatus which they use?—In some of the sugar colonies it is so, but it is not so with regard to all places, especially the continental countries. The following case is suggestive. The system of refining by employing centrifugal force to expel the syrup from the grains of crystalline sugar had been patented in this country in 1843, but was not introduced into any British refinery till 1850; at the latter date it was told us that there was some new plan of getting colour. I thought, or perhaps heard, that it might be by centrifugal action, and took pains to get inquiries made on the subject. At this distance of time I do not remember the exact dates or precise sequence of events, but they were much as I now state. We had never been asked by any Patentee, so far as I know, to adopt the use of any Patent for the centrifugal principle; and I am quite confident the centrifugal principle was never exhibited or explained to me by any person. We required to look about and make inquiries. Among other persons with whom we entered into communication or negotiations, were the eminent house who first introduced it into this country, and who had already applied for a Patent to secure, as I suppose, the application of the principle to sugar for themselves. After this, and after they were actually using the hydro-extractor for sugar, they found they had been anticipated, a discovery which, I fancy, we ourselves made before them in the course of our own investigations. We traced out that a house of respectability in the north had long ago patented the system; and, having put ourselves into communication with them, made trials with a model apparatus they had. We subsequently learned that they too, and possibly others, for others may have patented the principle, were anticipated so far back as the time I have mentioned, by my fellow-townsmen Mr. Laurence Hardman, to whom belongs the honour of having introduced the application of the hydro-extractor and the centrifugal principle into the manufacture of sugar. And I may mention a remarkable circumstance; the operative manager of that gentleman's works in India was experimenting there, on the application of this principle, almost as soon, or about the same time, as Mr. Hardman himself experimented here, neither party having any concert together or exchange of ideas. This fact, and the others I have mentioned, show how speedily and almost simultaneously do similar inventions, or at least adaptations, occur to a number of unconnected persons. I let Mr. Hardman know that our firm was willing to negotiate for a licence, for an interest in the working of the Patent, or for a purchase of the Patent rights. He expressed himself in such a way as to show that he had not been minding his invention. Soon afterwards, unfortunately, without coming to our firm, he con-

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cluded a transference of his rights to a party not engaged in any regular business, (who had on the continent come to know something of the movement in progress,) and as it appeared, for a consideration quite disproportionate, that party having made certain representations about a Patent he himself was applying for, which proved when specified to be of questionable value and validity. Eventually the principal parties, (including Messrs. Manlove and Alliot, the original Patentees of the hydro-extractor so far back as 1837 or 1838, who missed the appropriation of the principle to sugar, by this article not being *ejusdem generis* with the articles to which they had specified its applicability,) formed a coalition for the sale of privileges comprehended in the several Patents. We came to terms with them, and for a large sum, though a sum much less than they demanded from others, secured a licence, and we are working the apparatus to this day. The rate first contemplated by one of the Patentees was 2s. per cwt. if I remember right. The rate which was eventually charged, though a great deal lower than that, was still so high that a comparatively small number adopted the system, and these only to a limited extent, during the currency of Mr. Hardman's Patent. The charge made for the application of the hydro-extractor to sugar was, as I have just said, very high; a vast sum was expected for it. But the cost of experiments was not such as to constitute any claim for this; nor the originality of the idea, for it was a mere application, and so very obvious a one that several parties patented it, as I have shown. The great merit is due to the inventors of the machine, who got comparatively little advantage from the affair, if they did not even rather suffer from interference with their sales, which probably they themselves think they did. Then again the Patentees, as well of the first as of the latter claims for the monopoly, did not so push the introduction of the invention as to entitle them to special favour; nor, indeed, can it be said to have been by them introduced at all, for the first practical use in Europe was on the continent, whence it was, as I am convinced, introduced independently of them.

1996. (*Chairman.*) I understand your objection to Patents altogether to be that they constitute a protective duty to foreigners against the British manufacturer; but in considering that it is necessary to take all attendant circumstances into account, have you considered how far your greater command of labour, machinery, and coal, and your greater facilities for the disposing of your goods compensate for the disadvantage so incurred?—No doubt those circumstances go to a certain extent in our favour. Still that does not excuse the Government for putting us knowingly on an unfair footing.

1997. Is there any other suggestion, with reference to the subject of Patents generally, which you wish to offer to the Commissioners?—I ventured, in the answers which our firm has sent in, to allude to the value of the Indices and Specifications which are published by the Patent Office, and I think that the system might be carried out still further. I think that classification might be carried further, that the same invention might be shown to be applicable to, and appear in, a considerable number of different classes. It occurs to me that the system of having patent libraries in different parts of the Kingdom, accessible to all parties wishing to refer to Patents, is an admirable one, but it might be carried still further by presenting the volumes of Indices (I do not mean the Specifications) to public libraries generally throughout the kingdom.

1998. Is not it the case that the Patent Office publications are very freely given away to the public libraries in all the large manufacturing towns and in all places where they are likely to be of general use?—I hardly think it is so. If it is, well and good. If not, I think that it would be well if they were presented gratuitously to all the libraries of the kingdom. I do not mean the full specifications. Generally the institutions that would be glad to receive the series of Specifications find that they take so much shelf room,

and the cost of binding is so great, that they find it inconvenient to receive them.

1999. (*Lord Overstone.*) From what source would you defray the expense of that extended system of publication?—The revenues of the Commission of Patents are sufficient to pay for that.

2000. Are not those very revenues that tax to which you so strongly object?—No. Allow me to supplement what I have said already as to privileges by adding that even if they were to be abolished it would be fair and wise to allow every discovery and invention, or even any idea affecting the arts and manufactures, to be officially registered and rewarded with a honorarium or some sort of honorable recognition that would please and stimulate parties cognizant of improvements, and would contribute to their success in promoting the sale of the articles, the novelty and merit of which should be thus certified.

2001. You propose an extended system of publication, the expense of which you say must be defrayed out of the revenues of the Patent Law Commissioners. Those revenues of the Patent Law Commissioners are derived from the maintenance of that very charge which you call an unjust tax upon the English inventor. How do you reconcile your objection to the maintenance of that unjust tax with your suggestion that the expense of the extended issue of publications on the subject of Patents should be defrayed out of that tax?—If the tax, by which I understand the money paid to Government for Patent privileges, is to be continued, that appears to be a legitimate application of it. If the tax is not to be continued, the public exchequer might afford what I want. I do not think that practically there would be a great difficulty.

2002. (*Mr. Fairbairn.*) According to your theory if Patents were to be registered in the way which you describe, and to be rewarded with medals or a honorarium, do you think it would suit the Patentees; it would not remunerate the Patentee who had spent a large fortune to bring his Patent into notice, would it?—I would be pleased rather than otherwise (because every one likes to see his neighbours thriving) at a handsome sum being devoted annually by the Government to the rewarding of inventors, and there might be the addition I have already spoken of, of a medal or an honorable recognition, which the inventor might be able to advertise and say, this is an invention which has been honored by the Government.

2003. Have you ever contemplated any plan of reimbursing that money which might be expended in that way by the Government?—My impression is that 200,000*l.* a year would be a most handsome remuneration to inventors, while the present system costs the country, I should say, nearly 2,000,000*l.* (besides the chance of losing some part of our manufactures and also of our export trade,) not that the Patentees themselves receive any more than a fractional part of that sum. I think one very serious consequence of the Patent Law is that we lose facilities for perfecting our manufactures, by every manufacturer not being at liberty at once to avail himself of all improvements. We have not the power of combining inventions that are naturally connected, and might be mutually helpful, and still less have we power to avail ourselves of these gratuitously, as our rivals in some other places have, and therefore we may be distanced in the race of competition with other countries.

2004. (*Mr. Hindmarch.*) Do not you in effect propose a substitution of one tax in place of another? I do not see that.

2005. This money is to be paid out of the public revenue. That revenue must be raised by a tax in some way or other?—I am anxious to have no Patent which would fetter manufacturers and which would unfairly burden manufacturers. So far as the Patent fees are paid on any article that is consumed in this country, the consumer eventually pays them undoubtedly. For the 200,000*l.* that the body of con-

sumers would pay if paid out of the exchequer, they at present probably pay 2,000,000*l.* Therefore the nation would gain largely, even though the consideration-money that I mean the Exchequer to appropriate to inventors would involve some slight absorption of taxes.

2006. (*Lord Overstone.*) If any large annual sum were paid out of the exchequer to remunerate a certain set of Patentees would not that be in principle and practice a government bounty in favour of the trades benefited by the particular Patents?—It would, but with this qualification; that the advantage which those particular trades derive would go entirely to the public, therefore the manufacturers, or the trades who got the benefit, would merely be the channels for conveying the benefit to the public. I contemplate a yearly grant of not more than 200,000*l.* at the utmost. I may be permitted to observe that it is of the essence of a Patent to be a bounty to particular persons, and the reverse of a bounty to other persons, (who may be engaged in the same trade,) which is really objectionable.

2007. (*Mr. Grove.*) Do you think that it would be possible to make adjudications of those money grants to inventors so as to give anything like reasonable satisfaction. We found even in the awarding of mere honorariums at the International Exhibition a grievous amount of complaint. If, as you propose, substantial pecuniary benefits were given to inventors would there be any chance of your being able to do so without creating great general dissatisfaction and rivalry?—In order to avoid that I propose that the inventors of each year should have the right of nominating their own valuers and their own committee, so as not to make it a Government affair.

2008. (*Mr. Hindmarch.*) How would you get a man at Glasgow and a man at Cork to concur in making any particular appointment?—I do not see any difficulty.

2009. The man in Glasgow would choose one and the man at Cork another?—The man in Glasgow would employ a London agent and the London agent would advise with him as to whom he should nominate.

2010. Do you think that the London Patent agent would know anything about the value of a sugar refining process?—I suppose that the valuator would need to make all inquiries. By inquiry he would be able to ascertain what the value of a process is, I think.

2011. (*Chairman.*) Is there any other point upon which you wish to make any suggestion to the Commissioners?—Another suggestion which I would venture to make is that if a system of buying Patents for the public internationally were carried out it would be very advantageous; that is to say if the various Governments of Europe and America were to abolish all exclusive privileges, and were each to grant a certain sum per annum for inventors, it would be much better for the interests of the several nations.

2012. As a matter of fact there is not a country in the civilized world which has not a Patent Law, is there?—There are some I believe which have not. Switzerland I believe has not, and some of our own colonies have not.

2013. But all the great nations of Europe and the United States have?—Even small places have to be considered. I do not know that Hamburg has a Patent system; there used to be a great deal of sugar refined there. Very likely some of these smaller places have not.

2014. Have you any further suggestion to offer?—I would venture to propose that a return should be got of the number of Patents affecting sugar refining, and the employment of animal charcoal, in the various sugar countries and in our own, because I think that return would prove that we are subject to a great many sugar Patents which our rivals in our own colonies even are not subject to. This by a particular case would illustrate the general principle. With

respect to Patents generally, the subjects of Patents are of many different kinds. There are articles ready for public use. There are articles ready for use by manufacturers, but which are only helps towards making other articles ready for public use. There are raw materials. There are processes. There are principles. All those ought to be dealt with differently. That persons should have the power of extorting from manufacturers, shipowners, miners, agriculturists, &c., any amount of payment by royalties upon the use of those different kinds of Patents is very hard. I would not pronounce it a great hardship that the inventor should be at liberty to preserve the monopoly, and charge as high a price as he pleases, for a novel mustard-pot or carpet-brush, or any article for family use. It is a very different matter when, by inventing any manufacturing apparatus, or process, or raw material, that the progress of trade requires all the makers of some extensive article to employ; he embarrasses them in their operations by refusing licences, or charging prices which are burdensome and hurtful, or wrongous, and introduces disparity of terms and treatment, which is an almost inevitable characteristic of the system now in operation. Find now-a-days a new trade, such as the original toleration or sanction of invention monopolies (at a time when all other monopolies were made illegal) of invention monopolies apparently contemplated, and few will object to its being fostered or distinguished by exclusive privileges. It is wholly a distinct proposition to continue a system that has become almost universally, or at any rate far too often, a means of letting one person interfere with other persons' established trades, and with their liberty to conduct these trades to the greatest individual and national advantage. What is the case of manufacturers is, more or less, the case of shipowners, miners, and agriculturists. Then again, I think that it would be well to consider who are the different parties who make inventions. Is it workmen chiefly, or their masters, or tradesmen whom masters employ, or savans, or mere schemers, or persons who deal in inventions and who make a sort of trade in looking up new ideas? Or is it invention importers we have to do with? Very different treatment is due to those several parties or classes. In the case of workmen it is pretty clear—that they would rather have a bird in the hand than two in the bush; they would rather have a positive though moderate Government grant than the prospect of a large sum at some uncertain future. The most important thing to be borne in mind is the advantage to manufacturers of being free to use whatever they think fit. To revert to my own business for illustration—it is impossible, with so many as 400 Patents taken out within a very few years, for sugar refiners to make themselves acquainted with them all. They must frequently be exposed to the risk of using other people's inventions without knowing it. That is not a very pleasant situation; practically it is impossible to master the various Patents which have been taken out.

2015. (*Lord Overstone.*) Have you ever been seriously inconvenienced by applications being made to you in consequence of your having unknowingly used some Patent process?—We have not, except in the case which I have mentioned already.

2016. (*Mr. Hindmarch.*) Would it be a very expensive thing to you, to buy copies of all the Specifications which come out in any one year, relating to your business?—Certainly not; I do not think that it would cost much more than 20*s.* a year altogether.

2017. Do you not know that a great many manufacturers in this country do that continually?—We buy a good many Specifications ourselves.

2018. Therefore you have no difficulty in ascertaining what Patents have been taken out in your business?—The difficulty is to understand them, and also to bear them in recollection for 10 or 20 years. I have only to plead on behalf of manufacturers that some plan should be devised by which, while the

R. A. Macfie,
Esq.

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inventor shall be properly rewarded, the manufacturer shall be properly protected. I have no wish that inventors should want any honorarium, or any profit which is fairly their due, but we want some plan by which we shall be put on a fair footing with our rivals. So long as we pay what our rivals do not pay the footing is not fair. It is very hard indeed that a party should have the power of refusing the use of an invention which it is important for a manufacturer to have; he might say, "I have an ill will against you, I will not give you a licence on any terms, yet I will give it to your neighbour." A foreigner might take out a Patent and he might say, "I will not give it to any Englishman."

2019. (*Chairman.*) Is not there sufficient security against that in the fact that he punishes himself by losing his profit?—I hardly think that that consideration relieves us from the difficulty, because very foolish things are done by people. Very strange things happen in practice. Nothing is more strange, for example, than the small number of inventors who apply to us to adopt their inventions.

2020. (*Lord Overstone.*) Is not one of the strange things which happen in practice this, that in practice none of the apprehended grievances which you have expatiated upon have occurred?—But they must occur the first hour in which we have an important sugar refining Patent. Several important Patents have been taken out, but without exception all have been previous to free trade. We must have in the ordinary course some exceedingly important Patents, and then we shall be asked to pay probably at the rate which I have mentioned, 20,000*l.* a year. One firm which I could name may have to pay twice that sum for a single Patent.

2021. You are unable to state that that has yet occurred practically?—It is only ten years since the new Patent Laws have come into force, and it is for a less time that we have had free trade in sugar.

2022. During the last 10 years the practical grievances which you apprehend as in prospect have not actually occurred?—They have not occurred.

2023. (*Mr. Waddington.*) You account for that by saying that no Patent of value has been taken out, but you apprehend that if a Patent of real value were taken out the grievances would occur?—Yes; we must in that case have to pay many thousands a year.

2024. (*Mr. Hindmarch.*) You propose that legislation should take place not to cure any existing ascertained grievance, but to prevent the possibility of any injury in future?—Exactly. Not so much from our experience of grievances, as to prevent

those evils becoming practical which in time past we have had grounds to apprehend, and which may be justly feared in the future.

The witness has added the following note:

Reflection on my evidence as to the very small amount of inconvenience that our firm have felt from the multiplication of Patents in time past, led me to consult other houses. I attach the opinions, therefore, of Messrs. John Fairrie of London and Liverpool, (1), Alfred Fryer of Manchester, (2), Augustus W. Gadsden of London, (3), Messrs. Duncan, Bell, and Scott of London and Greenock, (4), and James Leitch of Liverpool, (5), all men of ability and large experience, and who mostly all have themselves taken Patents. The answers partly differ from the evidence I gave, which may be accounted for thus: that we at least have been among the comparatively unprogressive. I can hardly avoid this conclusion, from the conditions of the case:

1. "As to the question whether any public inconvenience was caused by the multiplicity of Patents, I should have no hesitation in answering it in the affirmative. It occurred to us lately, in making what we considered a trifling alteration in our apparatus, that we were informed we were infringing a Patent; and such things have occurred to us before, where we had not the slightest notion that a Patent could have been thought of, the matter was so insignificant."

2. "In the 15 years we have been in business we have only had to adopt three patented inventions that we remember. In two of these cases the charge demanded was neither large nor oppressive. In one case (Centrifugal Patents) we had to pay a large sum. I do not think that the multiplicity of Patents embarrasses us as refiners. Though not in reply to the question, I may add that the oppressive character of the Patent law is experienced by us in the fact, that when Patents are taken out in *England only*, and we have to adopt them, we are under an artificial disadvantage, as compared with other competitors. And this is not counterbalanced by Patents being taken out in Holland, Belgium, or France, which continental refiners must adopt, and we escape paying a Royalty, for the greater number of Patents are taken out in England."

3. "Your question involves a large subject, and is very difficult to answer in a few words. The bare question put as in your note: Does the multiplicity of Patents embarrass the refiner? is easily answered in the affirmative. The former question remains, Are you prepared to recommend the abolition of all Patents? To that question I am not prepared to give a decided answer."

4. "We have never at any time been embarrassed in our operations through Patents."

5. "In reply to your note, I do not think that the sugar-refining trade has ever been embarrassed by multiplicity of Patents."

The witness withdrew.

THOMAS WEBSTER, Esq., F.R.S., further examined.

T. Webster,
Esq., F.R.S.

2024a. (*Chairman.*) You wish to make some additions, I believe, to the evidence which you gave to the Commissioners on a former occasion?—There are one or two matters which I wish to say a word upon. With respect to the part which I took in the amendment of the Patent Law, I may say that the Act which passed in 1852 was the result of a very extended inquiry, in which the interest of the poor inventor, rather than of the capitalist, was considered. Since that time there have been several committees of the British Association and of the Social Science Association, which have, as regards the question of the cost of Patents, and the question of a preliminary inquiry, invariably taken the view that it was for the interest of the poorer inventor, distinguishing him from the inventor who had capital at his command, that there should be some preliminary inquiry; that the cost of Patents should be reduced; and that the inventor was entitled, out of the Inventors' Fund, to obtain information accumulated by means of that fund as to what might conflict with his supposed new invention. I will hand in to the secretary copies of those reports of the British Association, which show distinctly the views enter-

tained from that time to the present by the committees of that Association (*handing in the same.* See A. and B.)

2025. (*Mr. Grove.*) Have you a copy of the recommendations made by the joint committee of the British Association and the Social Science Association which were adopted at Manchester and printed for circulation?—I will furnish one to the Commissioners. (*See C.*)

2026. (*Mr. Fairbairn.*) You were a member of those committees, were you not?—Yes. There has been a committee about every other year since 1852, the three great points insisted upon being, that a proper library should be provided; that the poorer class of inventors required, and that all were entitled to, some assistance, such as would result from a preliminary inquiry, and that there should be a reduction of fees.

2027. You have entered pretty fully into the views of the committees of the British Association which have been appointed at different times?—Yes.

* This was the only question put in Mr. Macfie's inquiries. He gave no indication of wish or expectation that the answer should be either negative or affirmative.

I think that those committees were unanimous on the views which I have now expressed. Mr. Waddington asked me (at 1674) some questions about the alteration which had been made in the Act of 1852, as regards making it not compulsory but optional with the Law Officers to call in assistance or not. I have brought with me the Bill which was amended in the House of Commons, showing the precise amendments. The House of Lords had the original Bill printed with the amendments, and this Bill shows exactly the parts struck out and the parts which were altered in the House of Commons. The Bill of 1851 was lost for want of time, but it came back from the House of Commons, as regards this point, unaltered. The Bill of 1852 was altered in the House of Commons, and those were the alterations (*handing the Bill to Mr. Waddington*). The Solicitor-General, Sir William Page Wood, and the Master of the Rolls, Sir John Romilly, before the committee of the House of Lords, expressed their views upon the working of the system by the Commissioners very distinctly. Having consolidated the two bills I explained the provisions to the committee; and then the Master of the Rolls was asked to state his views with reference to the first clause, the first clause being to the effect that the Lord Chancellor, the Master of the Rolls, the Law Officers for England and the Law Officers for Scotland and Ireland, with such other person or persons as Her Majesty may appoint, shall be Commissioners of Patents, and that Her Majesty may from time to time appoint such other person or persons as she may think fit to be a Commissioner or Commissioners; the powers to be exercised by any three or more of them, the Lord Chancellor or Master of the Rolls being one. The Master of the Rolls says (Question 2786, Evidence 20th June 1851), "It is to be observed that they "are to be united with certain other persons whom "the Queen is to appoint to be Commissioners" ("they" meaning the Lord Chancellor and the Law Officers). "I have no doubt, practically, it would be "found that those persons so to be united with those "functionaries would be the persons upon whom the "labour would principally fall, and that, in fact, the "others would only be occasionally employed for "the purposes of checking them, or giving them any "assistance which, from their knowledge, might be "found necessary or convenient."

2028. The Master of the Rolls is then asked (Question 2787), "You think it would be necessary "to have some legal functionaries of that descrip- "tion to check the other examiners, even though it "should have the effect of somewhat diminishing "the responsibility of the other Commissioners?" and replies as follows:—"I think it essential that "you should have some one to check the Com- "missioners, and for that purpose it seems most "natural to employ the persons who have hitherto "been most conversant with the subject of Patents." Then the Solicitor-General is asked his opinion, and he says (Question 2798), "I quite concur "with the Master of the Rolls, I do not see any "real practical difficulty in appointing the officers "who are named in the second clause," (which is the first section of the Act,) "namely, the Lord "Chancellor, the Master of the Rolls, and the Law "Officers, the principal subject matter to which "they are to attend being the making of rules and "regulations, that will be the only work which they "have to perform, because though, as has been men- "tioned, they will have ministerial duties, the minis- "terial duties of those officers will be next to nothing; "the ministerial duty will fall upon the examiner "who is to examine the objections made to Patents, "and upon the Law Officers, to whom there is to be "an appeal."

2029. (*Mr. Waddington*.) It seems that the ap- pointment of an examiner was considered a matter involving an important principle of the new enact- ment?—Yes, and though the clause for the appoint- ment of examiners was taken out of the bill, the first section, providing for the appointment of other

persons than the Lord Chancellor, the Master of the Rolls, and the Law Officers of England, Scotland, and Ireland, is left in. I was pointing to that particularly as a principal feature in the Act which had not been carried out.

2030. Your opinion is that it would be desirable in that respect to revert to the bill in the state in which it passed the House of Lords?—In principle I think that the present Act of Parliament which provides for special Commissioners is quite sufficient; I have reason to suppose that the Committee of the House of Commons in making that alteration thought the first clause providing for the appointment of other persons besides the Lord Chancellor and the Law Officers, as special Commissioners, would be ample for the purpose.

2031. Without the provision that Specifications should be referred to them?—It was to be presumed that the spirit of the Act would be carried out as well as the letter. The Act of Parliament having made it permissive for the Law Officers to call in assistance, and not compulsory, left the whole manage- ment of that part of the system in the hands of the Law Officers; the result has been that the Law Officers of Scotland and Ireland have been excluded from any participation in the duties of the Com- missioners; the whole matter now devolves upon the Law Officers of England, and it is a very onerous duty, seeing the number of applications for Patents.

2032. Do you still consider it desirable that in every case the Specification should be referred to some competent person other than one of the Law Officers?—Most decidedly; a part of the vice of the present system is that there is no one person in any respect respon- sible for the grant of the Patent, and the result is that the applications being made to different Law Officers, Patents are granted for the same thing. All that is required in the first stage, namely, provisional pro- tection, (which is a document frequently prepared by the inventor himself, and this I trust always will be very much the case, because it gives him a security which he certainly does not always feel by going to professional persons,) is for some person to be satisfied that there are no conflicting claims in the office, but when you come to the subsequent stage of the Patent being proceeded for, then arises the necessity for a preliminary examination as regards novelty and as regards the opposition of any persons who have any interest to be protected, and which is provided for by the 12th section of the Patent Law Amendment Act.

2033. Do you think that provision sufficient?—I do. The first section of the Act empowering the appointment of special Commissioners has become a dead letter. The whole scheme is to place the juris- diction in the Commissioners, subject to any regula- tion which they may like to make. There is nothing to prevent special Commissioners being appointed under this Act and examiners also, the Law Officers acting as a court of appeal over them.

2034. Have the Law Officers in the case of oppo- sition any power to give costs?—Yes. That is by the Act of Parliament. Then there is another matter in which the Act of Parliament has not been carried out in the spirit of it, and perhaps not in the letter. One of the great objects of the Act was to avoid a multiplicity of offices, and to have all the documents collected in one office. At the present moment the distinct offices of the Law Officers, the Attorney General, and the Solicitor-General are continued. Caveats are still entered there, and applications for disclaimer are still made there instead of being made at the Office of the Commissioners of Patents. A good deal might be done under the existing Act of Parliament to improve the proceedings if the Com- missioners should think fit to recommend it, without the delay of further legislation.

2035. (*Chairman*.) If I correctly understand you the preliminary inquiry which you propose goes to the point of novelty only?—Of novelty only; and novelty only as regards what I may call printed and published documents, as contra-distinguished from what was alleged to be in use by manufacturers.

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2036. You would not have the examiners look beyond the four walls of the Patent Office. You would propose that they should merely declare that no Patent of a similar description was found recorded there?—I would not limit them to that. It might happen that the matter, though not recorded in the office, was published in print. The great object I conceive is to prevent the inventor, who may have no means of getting experienced professional assistance, wasting his time and money upon an invention which is old, or may have been proved to be impracticable.

2037. (*Lord Overstone.*) Do you propose that a Patent should be refused for want of novelty, or merely that a doubt as to its novelty should be made publicly known to the Patentee and to the public?—I should propose that the objection to its novelty should be made known to the Patentee in the first instance, and then I conceive he might amend his application or abandon it, as I know inventors are not indisposed to do when they believe that they are well advised as to the objections which are made.

2038. In the last resort would you consider a report unfavourable to the novelty as being monitory only, or as being prohibitory?—I would allow an appeal, and that should be conclusive.

2039. You would have a Patent refused if an objection to its novelty were sustained?—Yes, after an appeal.

2040. (*Mr. Waddington.*) Would you propose that the appeal should be to the Lord Chancellor?—That would be a question. My view upon that point is this: the Law Officers are now called upon to discharge duties which are very onerous upon them, and which do not really require officers of that position to discharge them. I think that all those preliminary duties connected with the granting of Patents might be very well left to some special Commissioner or examiner, but you could not possibly have a better person for appeal in the first instance than one of the Law Officers.

2041. (*Mr. Fairbairn.*) Supposing that the examiner reported against an invention would you allow the inventor, if he chose, to go on with his Patent?—No, I would not allow him to go on with his Patent if after an appeal it was decided that the invention was disclosed in a preceding Patent; because looking at the disposition which there would be to grant Patents rather than not to grant them, I conceive that neither the examiner nor the Law Officer would refuse a Patent except on a very clear case.

2042. Would not that appeal throw expense upon a poor inventor?—I think that those expenses ought to be paid out of the fees paid on Patents, or "Inventor" fund, as it has been termed, except where the applicant was really wilful. I think that there should be discretion as regards costs; but the substantial expenses and even those of the appeal probably should be out of the inventors' fund, subject to some discretions as to costs.

2043. If you did not allow an inventor to go on with his Patent, supposing the examiners to report against it on the ground of utility, and supposing it to be likely to become a useful Patent, would it not operate injuriously on inventors?—I would not allow them to consider the question of utility. No tribunal is competent to judge the question of utility, no one can tell the results from a change apparently small; therefore it would be extremely injurious to the interests of inventors if the question of utility were for a moment allowed to be entertained. But what I am putting before the Commission is that the inquiry should be as to novelty only.

2044. (*Mr. Waddington.*) Is not the question of novelty often a question of difficulty?—I think not. If it were the inventor would have the benefit of the doubt. I am assuming what is an every day occurrence, the case of a patent which has been previously published. I think, seeing the restrictions which may be placed upon an inventor as regards licences for instance and other matter, that it is but right that he

should have that assistance, as regards a knowledge of previous Patents, which can be given him at an extremely cheap rate in the office.

2045. (*Mr. Fairbairn.*) Is it your opinion that it would be advantageous to the inventor himself to have an inquiry made into his Patent by people competent to judge of the matter?—I think that it would be most advantageous to the inventor himself. With respect to the grounds for refusing a Patent, a great many inventions, especially those made by ignorant people, involve perfect absurdities, for instance, perpetual motion or the alchemy of early times. That is a class of cases in which possibly the examiner or special Commissioner might go a step further than on the question of novelty only. But at the same time it must be borne in mind how much science is indebted to the schemes of those visionaries, how much mechanical science is indebted to the perpetual motion schemers, and how much chemistry is indebted to the alchemists. So I think with regard to anything of that sort that although it might be apparently absurd, it would not be right that the Patent should not be allowed to go forward. The way in which I justify the granting of a Patent for matters in which might be thought an absurdity is, that in past history those visionaries have led the way to important improvements in mechanical science and chemistry.

2046. (*Mr. Hindmarch.*) I gather from you that you would only refuse a Patent in a very clear case. Is not it the law at present that if it is brought to the knowledge of the Lord Chancellor that the invention is clearly old he will not grant a Patent?—The theory is so; but we all know the enormous expense of going to the Court of Chancery, and though that is the law it is not the practice.

2047. It has been done?—It has been done, but at great cost. Look at the expense of the whole thing. First of all you go before the Attorney-General, frequently at a very great expense (for if the bills of costs which are incurred, and necessarily incurred under the present system in opposition before the Law Officers were referred to, they would be found to be a frightful tax upon the inventor), and beyond that the expense of going to the Lord Chancellor is very great, whereas you could have very much cheaper and more certain machinery if that system which I have pointed out were carried into practice.

2048. The Law Officers do occasionally stop Patents, do they not, when they find that the invention is wanting in novelty?—The present Lord Chancellor refused to go into that question in one case, to my knowledge.

2049. The practice now is different, is it not?—I know that it is the theory that the Law Officers go into the question, but practically it comes to nothing. How would it be possible for the Law Officers, even if they had nothing else to do, to go into that question? They have not the time. If the system had been carried out which was contemplated when the Patent Law Amendment Act was passed, and if the services of the Law Officers of Scotland and Ireland had been retained, you would have had some further assistance, but the first act of the Commissioners was to throw the whole duties upon the two Law Officers of England, and there is no practical means of any persons opposing with effect except at a cost perfectly frightful. The Commissioners might, perhaps, be able to obtain some information as to the actual costs incurred in the proceedings before the Law Officers, and might also ascertain how many Patents have been stopped before the Law Officers.

2050. (*Sir W. Erle.*) Would those costs be principally the costs of the advocate, or costs for witnesses?—They would be principally costs of attendances, journeys to London, professional assistance, affidavits, and declarations of witnesses, and miscellaneous costs. The bills of costs are perfectly enormous, so that no poor inventor could stand them.

2051. (*Lord Overstone.*) A return of the number of Patents applied for and the number refused by the Law officers could no doubt be obtained, but is there any mode of obtaining any authentic information as to the

costs to which you allude?—Solicitors might be applied to for their bills of costs. The fees to the Law Officers are extremely small, and the fees to counsel are not large, but the great expense consists in the general fees for copies of declarations and affidavits, journeys to London, and numerous appointments, the consequence of necessary delay, owing to the multiplicity of business of the Law Officers.

2052. We could only get a general statement of the universal understanding on the subject?—You could get some bills of costs. The costs are so enormous that oppositions have almost ceased.

2053. (*Mr. Hindmarch.*) Are not those bills of costs chiefly the costs of Patent Agents?—I am referring to the bills of costs of solicitors who have conducted the business in such cases.

2054. There are no means of taxing the bills of costs of Patent Agents?—No. It might be a beneficial alteration to put the Patent Agent on the same footing as the solicitor in that respect, but the Patent Agent deals more usually with matters of science.

2055. If a solicitor acts as a Patent Agent, you can tax his bill of costs?—You can tax part of it.

2056. (*Mr. Waddington.*) If there were examiners regularly appointed who would undertake those examinations, you think that the inquiry might be conducted more cheaply, and that, if necessary, there might be an appeal to the Law Officer of the Crown, which would be a cheaper process than an appeal to the Lord Chancellor?—Yes, and there might also be a further appeal, if necessary.

2057. That would be a cheaper process than an appeal to the Court of Chancery?—Yes. With respect to a question which is very much agitated, viz. the question of compulsory licences, which the last witness has been a great advocate for, if it were to be made a subject of inquiry, that question would very properly in the first instance be dealt with by the special Commissioners. That might be a very proper case in which to give an appeal, and I think the Privy Council would be an excellent court of appeal in such a question. They do now virtually take the question into consideration in granting extensions.

2058. Do they ever impose the condition of giving licences?—They have done so in several cases, and they have also imposed conditions as to prices. Another important result which would follow from having all applications for Patents, and also for disclaimers and memoranda of alterations, which is now a very important subject, reviewed by the same persons, having practical experience in the operation of such alterations, would be that you would get consistency of decisions. One of the great sources of expense to inventors who apply for Patents is the inconsistency of the decisions of the Law Officers as regards Provisional Specifications. There is no appeal, and no means of reviewing them. You have nothing settled as to what is a proper Provisional Specification. Each Law Officer goes through a very great amount of labour, especially if he comes fresh to the work, in his endeavour to do what is right in the matter. I know that the pains that the Law Officers take is immense, and the trouble thrown upon them is immense, till, having attained experience, the thing becomes a matter of routine. If you had a special Commissioner or examiner, whose responsibility would be at stake, and over whom the Law Officer would preside as Judge, the saving of expense to the poorer class of inventors would be enormous, both in the first instance and also in preventing them from running their heads against old fruitless and useless inventions.

2059. If the decision on the ground of want of novelty was final that would prevent persons from proceeding with Patents of no value at all?—Yes; persons get embarked in a thing of no value and it would be of immense importance to stop the thing *in limine* if the invention is not one that is new or is not likely to answer. Those are cases in which the inventor would be saved a great deal of trouble and expense. You prevent expense in the first instance,

you prevent persons embarking in it, and you prevent the accumulation of expense which is due to the first false step. At the same time you have a record of all their attempts and speculations.

2060. (*Chairman.*) Is there any other point in your former evidence with regard to which you wish to add anything to what you have stated?—With respect to the point of compelling objectors to state clearly their grounds of objection, the investigations which now take place before the Law Officers are almost entirely *ex parte*, which is an extremely inconvenient course. Very often the Law Officers speculate in the dark and are afraid to ask questions with a view to obtaining information for fear of disclosing what the invention of the other party is. As regards that it would be a great improvement if the opponents to a Patent were required to state their objections distinctly in writing, that is to say, if there were another prior invention set up the statement of it should be in writing, so that the opponents might be bound in the same way as the applicant is. The advantage now is in favour of the opponent; the opponent is not bound by anything except general objections. It would be a most important alteration to make that every person opposing a Patent should state distinctly in writing what the grounds are on which he opposes.

2061. (*Mr. Hindmarch.*) Though he cannot see the Provisional Specification?—Yes. The Provisional Specification might be made an open document after four months, it would not be safe to make it open at an earlier stage because it would interfere with foreign Patents, but seeing that under the old law the period for completing the Specification was two months, if the Patent extended to England only, and that under the present law it is six months, there could be no hardship in the inventor being obliged to mature his invention to such an extent within four months that the Provisional Specification might become an open document, so that the opponent might have an opportunity of seeing it. That is a matter of detail which no doubt the special Commissioners in consultation with the Law Officers might settle; but the hardship upon the applicant now is that he really does not know on what grounds he is met in opposition, and the opponent does not know whether his apprehensions may not be wholly groundless.

2062. (*Mr. Fairbairn.*) What is your opinion upon the question of a separate tribunal for the trial of Patent cases?—I think it would be extremely inexpedient to take the trial of them away from the present courts. I do not see that you could have the causes tried better than they are tried now, provided that you could get rid of the jury, though I would not get rid of the jury in all cases, because there are cases of disputed facts where the jury would be wanted as much as in any other case, for instance, as to whether the thing for which the Patent is claimed was done 30 years ago. I would make a rule that Patent causes should be tried by one of the Judges of the superior courts as now in the ordinary routine of business, aided by assessors. As regards the assessors I would suggest that the convenient course would be that each party should name four or five out of whom, perhaps, the judge might select, if the parties did not agree, two or four as he thought fit. As regards the proceedings I think that the great difficulty and the great expense of our present proceedings arise from the sort of bush-fighting that there is between plaintiff and defendant neither party being compelled to disclose his case. There is no reason why the plaintiff should not be called upon to state what is the infringement of which he complains, and the Chief Justice of the Common Pleas and other learned judges have taken great pains to compel the plaintiff to point out to the defendant what is the matter complained of. According to the present practice the defendant puts in many Specifications, because of the uncertainty and the indefinite nature of the complaints which the plaintiff makes against him, and the result is enormous expense.

2063. Do you think that it would tend to lessen

*T. Webster,
Esq., F.R.S.
21 May 1863.*

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Esq., F.R.S.*

21 May 1863.

that expense if it were left to the Judge who decided the case to call upon the assessors to assist him to come to a decision?—I think it would. That is a matter which has also been taken up by the Social Science Association, and the British Association. The report which was agreed on recommended that all cases in which experts were necessary the rule should be that they should be tried by a judge, with the assistance of experts, and not by a jury, except in cases where the Judge at chambers or other competent person should be of opinion that there were in the case matters of fact, as distinguished from matters of opinion involving matters of science, which required the assistance of a jury. I can see no reason why the plaintiff and defendant should not be required to condescend upon their cases with so much particularity that there really would not be much to try, so far as ascertaining the facts, with regard to the question in dispute.

2064. I believe there was a strong feeling in the different committees appointed by the British Association in favour of the principle that all cases of infringement should be left to the decision of the Judge, with the assistance of two or three assessors?—Yes; I think the feeling was very strong in favour of that, except among those who thought that a separate court might be established for granting Patents and trying Patent causes. There is a great deal to be said in favour of that plan, but on the whole I think it is decidedly objectionable; and one of the grounds peculiarly objectionable is this, you would then depend upon a single Judge whose views would be known; he would go in a sort of groove, it would be known what witnesses were acceptable to him, and who influenced him, and that would be productive of the most serious consequences; whereas now parties can select their own court, and we know how the law has grown up by reasonable conflict in the different courts in the trial of cases. And I think there is another objection which to my mind is equally serious. Connected with the trial of the mere question of infringement or novelty, you have a great many other matters, such as questions of title, and questions of licence, and questions of estoppel, difficult legal questions, and therefore such a special court (as has been suggested) could not in a satisfactory manner dispose of the whole cause.

2065. (*Mr. Grove.*) Do not you think it would be desirable if there were no special court that there should be some rota? Have you not heard of complaints that the plaintiff has an unfair advantage in having the choice of his court, while the defendant has no choice but must go whither the plaintiff takes him, so that if the plaintiff rightly or wrongly thinks one Judge is more inclined to Patentees than another, he brings the defendant into that court?—That is perfectly true, and it may be a positive advantage; the Patentee is entitled to something, and I think that that is a benefit to which he is entitled. The plaintiff has now the power in all cases where any questions of property are involved of selecting his court, and if a Patent is property, why should not the plaintiff be allowed to select the court to try the question regarding that species of property as well as the right to an estate? The same objection might be made in all cases.

2066. There is this difference, that in cases about the right to an estate every lawsuit involves a very different set of questions, so that a plaintiff cannot very well tell what a particular judge may think of his particular case; but Patent cases, to use your own expression, run very much in a groove; may not the inventor, by having his choice of his tribunal, select the tribunal which might be supposed to lean to the view that the plaintiff is necessarily an inventor?—Perhaps so; the instance I gave is not quite a case in point, but there are plenty of instances in which the views of the Judge are known.

2067. (*Chairman.*) Is there any other point upon which you wish to make any further observations?—I may add with respect to compulsory licences, that I really look upon compulsory licences as a remedy for

what appears to be the only objection to the system of Patents, namely that you have Patents used for obstruction. A great deal has been said about the obstruction of Patents, I do not admit it, but assuming such a thing, the remedy is the power to compel patentees to grant licences. The very fact of that power existing would work its own remedy. Knowing that licences could be demanded patentees would not stand out; and it would be equally beneficial to patentees and to the public.

2068. Who would you propose should decide the value of the Patent?—First of all I presume that the power existing, the parties would come together, but if they did not, I think the best persons would be the special Commissioners or examiners, from whom there should be an appeal to the Privy Council.

2069. (*Mr. Waddington.*) You consider that the settling of the issues before the trial comes on would be almost as valuable as the improvement in the tribunal itself?—It would be invaluable.

2070. You conceive that the mode now adopted of bringing the parties before a Judge at chambers is not sufficiently stringent?—The present legislation as it is carried out is almost useless. I feel ashamed of the sort of summonses that are taken out and the difficulty there is in obtaining any good result under them. The whole system wants altering. I would suggest that some person should be appointed, in the nature of a master or special Commissioner assisted perhaps by scientific examiners; the plaintiff might be required on summons to state particularly the infringement complained of, and the defendant might be required to state particularly what were his objections to the Patent, pointing out all the passages in the books, and in fact stating his case very much on paper in the first instance.

2071. Would you propose that this person should act as a sort of arbitrator, having the parties before him and ultimately settling the issues between them after full inquiry?—Yes, subject to an appeal to the court in which the action was pending.

2072. (*Mr. Waddington.*) Following the system followed in the Scotch courts?—Yes, it would be an approximation to it.

2073. (*Mr. Grove.*) Has the system of the Scotch courts tended at all to shorten the time of trials?—That is the objection we are met with, but it is hardly a sufficient answer, because Patent causes may be regarded as special cases. Looking at the fact that nine out of ten Patent causes resolve themselves into a special case upon written documents so soon as the facts and the meaning of terms are understood, I do not see why something in the nature of a special case should not be settled before going to trial.

2074. If we could have the whole of the case on both sides fully stated no doubt there would be an advantage, but you have two persons strongly interested in not doing so. Is it not the fact that every year Patent cases have been longer and have involved more complex inquiries?—The real reason of that appears to me to be the inadequacy of the tribunal to deal with them, namely the Judge at chambers. It is impossible for the Judge at chambers with the multiplicity of business before him to deal with such cases properly.

2075. (*Mr. Waddington.*) The defendant is not acquainted with what the plaintiff's case really is till the plaintiff's counsel has opened his case?—No, and sometimes not till long after the cause has been opened, because the thing shapes itself very often in the course of the proceedings.

2076. You think that a preliminary inquiry, before the parties came into court, would very much simplify the proceedings?—No doubt of it. It is quite out of the question that Judges at chambers can deal with such questions; they have no time for it; they are subjects which require to be dealt with specially.

2077. (*Mr. Grove.*) You have referred to the numerous Specifications which are put in by the defendant, and you may possibly have remarked the number of particulars of breaches put in by the plaintiff, how would you avoid that; would you tell

the defendant that he shall not put in more than three or four Specifications in his notice of objection?—No; but the necessity of the defendant putting in so many arises from the way in which the plaintiff shapes his case. If, as has been done in some cases, the plaintiff were compelled to show his machine to the defendant, and were to say, I complain of such and such things as infringements of so and so, the case would then be made much less complex.

2078. Perhaps you may remember a case in which the plaintiff, when so called upon, pointed out the whole of the machine and said at each part, step by step, "That is what I complain of," so that the defendant knew less after the examination than he did before?—There may be cases of that sort, but that there may be difficulty in applying the system is no reason why its application should not be attempted.

2079. Would you say to the plaintiff you shall only point out a certain number of things. How would you prevent him pointing out 50 things, or the defendant giving 50 Specifications, and relying upon two when the case came to trial?—The remedy for that is costs. If the plaintiff points out 50 things and upon the trial only relies upon two, he raises a suspicion of unfair dealing with the case, and that

would be a very proper case in which he should pay heavy costs.

2080. (*Lord Overstone*.) When an ordinary case comes before you you endeavour to eliminate all the unimportant considerations and bring forward the prominent considerations, you would apply the same principle and take the same action in the case of the preliminary arbitration, with a view to preparing the proceedings before going before the Judge?—Yes. I have long felt that a good deal might be done in that way towards simplifying the proceedings. In some cases you might fail to accomplish your object, but by the adoption of such a plan a great deal of good would be done in many cases. I know in many cases the parties have gone into Court, knowing nothing of each other's cases; and if you look at the fact that in nine cases out of ten it is nothing more than settling a special case for the Court, or the construction of Specifications I do not see why that should not be done by the parties in a regular and straightforward manner.

2081. In cases where you failed to accomplish your object no great evil would arise?—We should be no worse off than we are.

Adjourned.

Monday, 20th June 1864.

PRESENT :

The Right Hon. LORD STANLEY, M.P.
The Right Hon. LORD OVERSTONE.
Vice-Chancellor SIR W. PAGE WOOD.
SIR HUGH CAIRNS, M.P.
HORATIO WADDINGTON, ESQ.

W. R. GROVE, ESQ., Q.C.
W. M. HINDMARCH, ESQ., Q.C.
W. E. FORSTER, ESQ., M.P.
WILLIAM FAIRBAIRN, ESQ.

THE RIGHT HON. LORD STANLEY IN THE CHAIR.

His Grace the DUKE OF SOMERSET and Rear-Admiral ROBERT SPENCER ROBINSON examined.

2082. (*Chairman, to the Duke of Somerset*.) I understand that your Grace appears on behalf of the Admiralty for the purpose of stating the effects upon that department, of the working of the present system of Patent Law?—Yes, I appear to bring under the notice of this Commission the great inconvenience to the Admiralty of the present state of the law.

2083. Will you kindly inform us in what you conceive that inconvenience to consist?—The inconvenience consists in the apparent facility with which persons can obtain Patents covering a very large number of different inventions under one Patent. For instance, there is a Patent which one gentleman obtained some years ago, in building ships for a combination of wood and iron. Now it is almost impossible to build ships in these days without a combination of wood and iron. Therefore a Patent of that kind, where it is wide-spread, as it is in this case, brings us continually under difficulties with this Patentee. Whenever we apply wood and iron he is watching to see whether or not his Patent is invaded, and he complains and says, that different improvements which we have made without any notion of his Patent have been infringements of his Patent rights.

2084. Am I to understand you to say that his Patent is in the general terms which you have stated, namely, that it is for a combination of wood and iron?—He has taken the Patent in very general terms. I have not the exact terms here. I do not know whether the Comptroller of the Navy, Admiral Robinson, has the exact terms of "Feathers' Patent."

(*Admiral Robinson*.) I have quite enough to give the Commission an idea of it.

2085. (*Mr. Waddington*.) "A combination of wood and iron," I suppose, is the title?

(*Duke of Somerset*.) It is under very general terms. He also took out a Patent for the lining or padding of ships, so as to render them impervious to shot. Now a Patent taken out in those vague terms of course interferes with any improvements which we are endeavouring to make in that direction. Another gentleman has

taken out a Patent for all improvements of animal fibre, to prevent the jar and concussion caused by shot striking against iron plates, and to fasten round the screw-bolts. From this and from other Patents to which I could refer, I gather that there are a number of people watching the progress which is going on, and always running beforehand and getting a Patent for what they think may possibly be done afterwards.

2086. (*Mr. Fairbairn*.) And that by the application of certain materials, either in combination, or otherwise?—Yes. Of course in a Department like the Admiralty, and particularly in the present day, when we are continually anxious to make improvements, and obliged to make a variety of experiments, these innumerable Patents are a source of great inconvenience, and it is very difficult to say how to deal with them. For instance, as probably the Commissioners are aware, we had a long lawsuit with Mr. Clare for constructing iron ships; he said that was an infringement of his Patent. It puts the Department to an immense amount of trouble; they have to collect evidence, and their time is taken up in preparing it. The Admiralty have the expense of an action at law, and if they gain their cause, the moment they gain their cause the Patentee declares that he has not a farthing, and the public have to bear the expense of what is in reality an imposition upon them. Now there are a great many Patents of that sort which have been taken out. There are various processes for preserving iron. Persons run and take out a Patent for what they think is going to be done in that way. There are a great many in the case of iron ships. I think that when the "Warrior" was built there were five or six persons who all said that their Patents were infringed, though I believe that, when the "Warrior" was designed, none of their Patents were known to the designer, and they had never been used. Even in some of our trials of targets, we are told again, that if we put iron and wood in a particular way in a target we are interfering with certain Patents. In fact it is almost

T. Webster,
Esq., F.R.S.

21 May 1863.

The Duke of
Somerset and
Rear-Adm.
R. S. Robinson.

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*The Duke of
Somerset and
Rear-Adm.
R. S. Robinson.*
20 June 1864.

impossible to move anywhere without being told that we are interfering with the Patent right of some gentleman, and the inconvenience to the Department of course is enormous in the time which it takes up. On many occasions we have been recommended by the lawyers rather to pay the money than to enter into a lawsuit to defend ourselves. In the case of the screw-propellers the Admiralty in 1851 purchased five different Patents, hoping that they should have peace by that means, but they had all sorts of claims afterwards; they were told that they had infringed different Patents, and they have had to pay for other Patents since.

2087. (*Chairman.*) Is it not an inconvenience inherent in the very nature of Patent rights, that if A. and B. hit independently upon the same invention, and if B. hits upon it a little later than A., A. having the advantage of priority, has the power of excluding B. from the enjoyment of that which B. himself may have discovered?—I think that if A. invents something, he should make something, and produce it. If he takes out a Patent for doing something, and then stands still for 8 or 10 years and does nothing, it seems to me to be a course which, instead of making the Patent Law encourage inventions, renders it a great discouragement to inventions.

2088. Then your complaint, as I understand, is two-fold, partly at the too large and vague terms in which these Patents are taken out, and partly also that a man, after having taken out a Patent, does not give to the public, or to anyone else, the advantage of that which he supposes himself to have discovered, but at the same time has the power to prevent any one else doing the thing without paying him for it?—Yes, those are two very great objections to the present system of the Patent Law. The Patents seem to be given too vaguely and too widely; and again, as has been said, when a person has a Patent he makes no use of it himself, but only watches till he can catch somebody else in his hook. For instance, it was but a few days ago that an ingenious plan was proposed to us for moving the shot along a ship at a certain height from the deck. It was said that you could thereby bring the shot to the different guns more easily, and as we are now using very heavy shot, this was an object. But we are immediately told that there is a Patent for that purpose, that Messrs. Laird and Cowper have taken out a Patent for a sort of railway suspended to deck-beams, and that if you move anything along by a railway hanging from above, that is an infringement of their Patent. Now that seems a simple thing, and it is a thing which, as it appears to me, ought not to have had a Patent granted to it, because there is no great invention in it. Fortunately, the plan which was suggested to us was to move the shot by means of uprights from the deck, and that I believe would have been found to defeat the Patent, and therefore we might have gone on.

2089. (*Mr. Fairbairn.*) Was that to elevate the shot?—Yes, and to run it along to the different guns.

2090. You proposed to do that upon a carriage, I apprehend, like a railway suspended from the upper beam?—Yes, that was the suggestion. It was in consequence of the innumerable quantity of these cases, which the Comptroller of the Navy can go into far better than I can, that I was anxious to bring this subject before the Commission; and this year, as I had not heard from the Commission upon the subject, I wrote a letter to the Lord Chancellor, which I, perhaps, had better read, because it will state the case quite as shortly as I could state it myself.

His Grace read the same, as follows:

“Admiralty, 17th March 1864.

“Dear Lord Westbury.—The claims of Patentees construct so seriously the works of this Department, that it will become necessary for the Government to consider whether the laws connected with Patents should be amended, or whether the form in which Patents are now granted could be improved.

“On this subject I wish to ask your advice. So far as regards any Patent article, the form of Patent provides that the Crown may make use of any patented article on payment of such a sum to the Patentee as the officer who administers the Department may consider fair and reasonable.

“This form of Patent meets the requirements of the public service, in cases where a patented article is used. There are, however, numerous cases where there is no patented article for sale, but where a claim is raised for the use of some patented mode of construction.

“In shipbuilding these claims are repeatedly raised. A Patent has been obtained, but never worked; it lies dormant for years, until the inventor perceives some opportunity to set up a claim, trusting that the words of his Specification may be ample enough or vague enough to serve his purpose.

“In some such cases we have been advised rather to pay a sum of money than incur the expense of contesting the validity of the Patent. In other cases we have contested the Patent. Mr. Clare, for instance, under a petition of right, claimed many thousand pounds. We incurred large expense, and although the Crown gained a verdict with costs, Mr. Clare was a pauper, and the Crown had to pay.

“Now, what I wish is, that the form of the Patent should be altered. I desire that a warrant should be issued under the Royal Sign Manual directing the Law Officers, in granting Letters Patent, to reserve to the Crown the full use of any Patent, on payment of such sum as shall be deemed fair and reasonable by the head of the Department using the same. The Crown has, I presume, power to direct that any restriction may be inserted in a Patent, and the restriction here proposed seems reasonable, as I am certain it is necessary for the public service.

“Would you consider this matter, and give me your opinion.

“Believe me, &c.
(Signed) “SOMERSET.”

Having written that letter to the Lord Chancellor, I took the opportunity of seeing him shortly afterwards and he told me that he would have been quite ready to consider it, and to give me advice, but that as the subject was under the consideration of a Commission, he thought that it would be improper for him at the present time to do anything, and that he would wait till the report of the Commission had been made. That was what made me anxious that this matter should be again brought under the notice of this Commission.

2091. (*Chairman.*) With regard to the special remedy which you propose, of reserving an exceptional powers to the Crown to use Patents, how would it work in cases where the public departments may be said to be competing against private manufacturers, as, for instance, in the manufacture of arms?—First of all I do not think that the public departments are likely at the present day to get any great advantage over individuals. I think that generally there is a jealousy of the public departments, and juries certainly take every care of the Patentee. I think that in other cases the House of Commons takes sufficient care of inventors. I do not think that they would suffer from it. But if it was thought that the Department itself had an interest, and might be biassed in defeating the fair claims of an inventor, the decision might in case of doubt be referred to the Treasury, or some superior department, which could not be supposed to have any other interest than the general interest of the public.

2092. I presume that a department may always be considered as having an interest in keeping down its own estimates?—Yes; and therefore in cases of doubt it might be better to let it be done by the Treasury. In the case of patented articles the head of the Department has now the power, as I understand, under 15 & 16 Vict., to take a patented article and to pay only such sum as is considered

reasonable by the Department. I understand that to be the law as regards any patented article, and I want to extend that to where the mode of doing something is patented without an article being produced.

2093. (*Lord Overstone*.) You wish to apply the same principle to patented processes as is actually now applied by the law to patented machines?—Yes; that would effect the object which I have in view.

2094. Would the difficulty suggested be in any degree remedied by an arrangement, if it was thought necessary, by which the competing parties under this supposition should be entitled to use the patented article upon the same terms as those upon which the Government had taken a right of user?—As regards the army and the navy a great many of these Patents are not intended to be used except by a public department; in fact, they are precautions to prevent the public getting advantages without paying the individual something.

2095. In most of the cases to which your Grace refers, the rights which are patented are really so patented for the purpose of being ready to strike a bargain with the public interests, and not generally speaking with any view to use by private individuals?—Quite so.

2096. (*Chairman*.) Would you apply your suggestion to all cases of inventions of such a character that they could only be used by a Government. Take, for instance, the manufacture of guns, it may be assumed as certain that an individual would not desire to manufacture guns largely on his own account, but he might desire to patent an invention with a view to sell it to some foreign state, or even to manufacture guns on behalf of some foreign state?—Yes; but I think that if he was paid what was considered reasonable by the Department, or at any rate what was considered reasonable by the Department with a reference to the Treasury, every thing would be done which would reasonably be considered as justice to the individual.

2097. (*Mr. Fairbairn*.) Would there not be some difficulty in assessing the exact sum which should be paid for a Patent?—I suppose there would.

2098. Should that be done by the law officers of the Crown, or in what way would you recommend that it should be effected? Would you leave it to the Department, as in the case of machinery?—I think that the Department might first say what it considered fair and reasonable. I think that if there was an appeal against it, it might be referred to the Treasury, who could either decide themselves, or, if it was a very complicated case, could appoint one or two qualified persons to pronounce an opinion upon it.

2099. They might, for instance, call in assessors competent to determine?—Quite so. Then there are cases of disputed claims by rival inventors, which are embarrassing to a department; we do not know who has a claim to a Patent, and sometimes when we buy a Patent of one person we are told that we have done a great injustice to another. I remember that when we paid for the Griffith Patent screw, which was cutting off a small portion of the screw, I had repeated letters from Sir Howard Douglas, telling me that it was a great injustice to him; that he had invented all this, and that his fame was diminished, and that his rights were taken from him by the Admiralty, who had most unjustly and unfairly paid Mr. Griffith. Those cases are continually arising, and of course they are very inconvenient for a department: they not only take up a great deal of time, but they very often prevent some very desirable process being gone on with. I should propose that, in those cases of disputed claims, the Department might be allowed to pay into Court what they considered a fair and reasonable sum, and that when the question was decided between the rival inventors, the successful party should get it, but that the Department should not have any trouble on that account.

2100. (*Mr. Waddington*.) You would propose that the Crown, who grants the Patent, should have the

right of using it, even though the party refused to grant a licence?—Yes.

2101. That is placing him somewhat in the same position as if he were compelled to grant a licence at a certain price?—Yes, and I think that it might be obtained by a form of Letters Patent, which, in my opinion, it is quite within the power of the Crown to make.

2102. (*Lord Overstone*.) And you anticipate that the effect of such a form so introduced into the Patent would in reality be to put down a great number of these vague Patents, which would be desirable on general principles, as well as on the ground of their interfering with the public interests through the Admiralty?—I should think so. When I was at Woolwich, for instance, I saw the different shot which were to be used against iron plates; they showed me different forms of shot which had been made in the arsenal a great many years ago, but all of which had since then been patented by different persons, who claimed these forms of shot under their Patents.

2103. (*Mr. Fairbairn*.) A Patent was taken out not only for the form of shot, but also for the composition of the material composing that shot?—Yes.

2104. And I know from experience upon the Iron Plate Committee, that scarcely a subject came before us but what had a Patent, some of them being exceedingly frivolous?—Yes; there are some details of these things which perhaps Admiral Robinson can explain to the Commission better than I can.

2105. (*Chairman, to Admiral Robinson*.) You have heard the evidence which has been given by the First Lord of the Admiralty. Are you prepared to confirm by particular instances in greater detail what has been stated?—I think that I can confirm all that his Grace has stated. I may be allowed to call the attention of the Commission to this book; it is an abridgment of all the Patents which have any relation to inventions in ship-building, from the year 1608 to the year 1860, it has not been completed since 1860 owing to the great number of Patents for different things which have since been granted. But looking to the construction of ships alone, and disregarding every other point, there are three or four remarkable instances of the immense number of Patents which have been granted, and of the trouble which must naturally be imposed upon a department to know whether any proposal which is brought before it may be applied without infringing a Patent or not. For iron combined with wood on the hulls of ships alone there are 31 Patents. For iron-cased ships there are 33 Patents. For shields and armour plates applied to men-of-war there are 52 Patents. Other matters are much in the same proportion. I will only quote one more instance, namely, Patents for improving the speed of ships by forms, there are 65 Patents for that alone. But in the article of rudders, and in the article of steam machinery, and everything connected with the construction of ships, the number of Patents is quite as great as those which I have read to the Commission. This matter alone, perhaps, would show a *prima facie* case of the inconvenience, at any rate, to which a department which has to deal with inventions relative to the construction of ships is put.

2106. (*Lord Overstone*.) Suppose that any improvement in any of the departments of ship-building, such for instance as the form of ships, was suggested to the Admiralty, could they by any reasonable investigation beforehand satisfy themselves whether they were or were not infringing Patents?—The number of Patents which relate to the forms of ships being so great, and being drawn up in the loose and vague way in which Patents are drawn up, I think that it would be exceedingly difficult to come to a conclusion whether something which you did might not violate some claim in a Patent as it now stands.

2107. So that in the existing state of the law a proposed improvement on the part of the Admiralty in the construction or form of ships is liable to be embarrassed by a variety of Patents, and the Admiralty

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has no sufficient means of ascertaining beforehand whether the proposed improvement can be safely made or not?—No; with this understanding that the words “sufficient means” refer to a very great loss of time and very great uncertainty attending the investigation.

2108. Loss of time would not invalidate the sufficiency of the means, but uncertainty in the result of the inquiry, of course, would?—Yes.

2109. (*Chairman.*) Is it a fact that you can hardly make any improvement in the construction of ships, or of guns, or in the working of vessels, or in other parts of the business of your Department, without finding that you are, so to speak, running your head against somebody's Patent?—I think that we are stopped at every turn.

2110. (*Mr. Grove.*) Have you any table or index of the number of times in which the Admiralty have been compelled to apply to their legal advisers to know whether Patents really stood in their way or not?—I can give you a few instances of late years, in which it has been necessary for the Admiralty to resort to the opinion of their solicitor. I commence with the year 1861, which was the year in which I came into the Comptroller's office, and from that time to this I can give you a list of the cases. There have been 12 upon the construction of ships since 1861.

The witness delivered in the following paper :

“ABSTRACT of CORRESPONDENCE relative to the use, alleged infringement, &c., of the following Patents :

Mr. Bush	-	Construction of ships.
Mr. J. Clare	-	Construction of ships.
Mr. P. Drake	-	Construction of ships.
Mr. A. Lamb	-	Construction of ships.
Mr. W. Rae	-	Keels, stern posts, &c.
Mr. Thomas and Col. De Bathe.	-	Mr. G. Clarke's target.
Mr. Truss	-	{ Animal fibre.
		{ Armour plates.
Mr. Beslay	-	Preservation of iron.
Capt. Wheatley	-	Position of guns in ships.
M. De Lapparent	-	Carbonizing timber.
Commander Warren	-	Bow rudder.
Mr. Feathers	-	Construction of ships.
Messrs. Woodcroft, Smith, Ericsson, Lowe, Blaxland, and Mr. Currie.	-	Purchase of Patents for screw propellers.
Capt. Carpenter	-	Screw propeller.
Capt. Trewitt	-	Disconnecting apparatus.
Mr. Griffith	-	Screw propeller.
Mr. J. O. Taylor	-	Screw propeller.
W. Ireland	-	Cupola.
Messrs. Laird and Cowper.	-	Trimming coals in ships.
-	-	Distilling apparatus in “Defence.”

2111. (*Mr. Waddington.*) In those cases the Patentees claimed compensation for infringement?—Yes, and it was necessary for the Admiralty to have recourse to their solicitor, and to enter into a very long correspondence.

2112. (*Mr. Fairbairn.*) It is very possible that you may infringe upon these Patents without knowing it?—Constantly. The inconvenience which the Duke of Somerset has mentioned resulting from Patents applied to ship-building is so very great that it is scarcely possible to build a ship, being a combination of wood and iron (and you always have some of each in a ship), without treading upon somebody's Patent, and I am entirely of opinion that the Patents are drawn up for that especial purpose, without any idea of their being practically applied for the benefit of the public, but only that the Patentee may lie in wait for a colourable evasion of his Patent taking place, and come upon a public department. The Patentees do not look after private individuals, but they think (for reasons which are obvious) that a public department is fair game.

2113. (*Mr. Waddington.*) And their remedy has been considerably facilitated by a late Act as to a petition of right?—Yes, because before that I understand there was no remedy at all.

2114. (*Mr. Hindmarch.*) In one of the cases to which you have referred, namely, the construction of a ship partly of wood and partly of iron, you allude, I think, to Feather's Patent?—Yes, that is one of them.

2115. That Patent, if I remember rightly, was taken for constructing the upper part of a ship's side of iron and the lower part of wood?—That is an outline of the Patent.

2116. And that Patent you are alleged to have infringed, because, in constructing one of the ships of the navy, you laid about one-third of the upper side of iron and the rest of wood?—Yes.

2117. There was no sort of indication in the Patent that a claim of that description could be made. If I remember rightly, the Patentee also claimed a mode of connecting the iron with the wood, which you did not use, but nevertheless he said that you introduced it?—Yes, the Patentee claimed a mode of putting this iron on the top of the wood essentially different from the mode adopted in the building of the “Enterprise.”

2118. So that the only method in which the Government vessel resembled the Patentee's vessel was that a piece of the one was made of iron and another piece of wood, and so was the other?—Yes.

2119. (*Mr. Fairbairn.*) I suppose that you have experienced that it is exceedingly difficult for the Government to introduce any improvements without treading on the heels of some Patent or other, either directly or indirectly?—Very difficult.

2120. If you could get clear of a number of Patents which are not valid at all, it would relieve the Government very considerably?—Very much.

2121. (*Mr. Hindmarch.*) Have you inquired whether foreign countries acquire the right to use English inventions for warlike purposes; for instance, without paying anything for patent right in their countries to the Patentees of those inventions?—I do not know what the practice of foreign countries is.

2122. If a Patentee has a right to make a valid claim upon the Government, he has a right to say, “You shall not use the invention,” it is quite clear that he cannot have the one right without the other. A Patentee might say to the Government, “You shall not use a gun of this shape at all.” Have you made any inquiry with respect to foreign governments using, for instance, Sir William Armstrong's gun, or anything of that sort. Could the French use it without paying any patent right to anybody?—I cannot answer that question, not knowing the state of the law.

2123. (*Lord Overstone.*) I suppose that it is quite clear that the publication of the Specification of a patented article of war necessarily communicates that secret immediately to any foreign government?—Not necessarily, because the terms of the Specification are so vague, and so much is often reserved, especially in the making of a machine, which a gun may be called, as to the mode in which the material shall be put together, that the Specification does not always enable you to know it.

2124. Is it not the very object and principle of a Specification that it should set forth the discovery, so that in case of the sudden death of the inventor, the public would be in possession of the means of availing themselves of his invention?—Probably that is the intention, but I think Patents are often conducted in a very different way.

2125. Do not you think that that is a great defect with regard to the Specification, and that it does not answer the purpose which it was intended to answer, of putting the public so effectually in possession of the secret that they could themselves work it whenever the obstruction of the Letters Patent was removed?—So far as I can understand it I think that there is very great laxity in the way in which Specifications are drawn up—laxity both ways.

2126. (*Mr. Hindmarch.*) In those cases do you see any difficulty in the way of a Patentee correctly and efficiently describing the nature of his invention?—No, and I think that no Patent should be granted where

the invention was not correctly and satisfactorily described.

2127. (*Lord Overstone.*) Have a public department of the Government never thought of disputing a Patent which was raised against them, on the ground that the Specification was not so distinct as it ought to be, and that it involved an indistinctness which invalidated the Patent?—Certainly, that was so in the case of “*Clare v. the Queen.*” The Government disputed Mr. Clare’s claim upon that very ground.

2128. Did they succeed?—Yes, but in spite of the verdict being for the Crown there have since been continued applications to the Admiralty, and continued petitions addressed to both Houses of Parliament by Mr. Clare, and a great deal of indiscriminate abuse, which of course does not matter much.

2129. (*Mr. Waddington.*) And I suppose that a considerable sum of money was spent in the contest?—Very great.

2130. (*Mr. Fairbairn.*) Do you think that a closer investigation into the question, whether a Patent should be granted at all, would be serviceable in order that Patents which are of no use should not be granted?—I dare say it might, but a Specification of a Patent is really a case for a very sharp legal mind; there are so many ways in which it can be turned, that I do not think that any layman is very well qualified to give an opinion as to how a Specification should be drawn. I only speak generally upon the fact, that public departments, at any rate the Admiralty, are excessively impeded in their operations by the present Patent Law, and that an amendment, for the purpose of procuring everything which they ought to have, is very much needed.

2131. (*Mr. Grove.*) If I understood his Grace rightly what he proposes would be met by a few words in the form of the Patent. The present words of the Letters Patent are these: “If the Patentee, his executors, &c.” “shall not supply or cause to be supplied for our service all such articles of the said invention as he or they shall be required to supply by the Officers or Commissioners administering the department of our service for the use of which the same shall be required, in such manner, at such times, and at and upon such reasonable prices and terms, as shall be settled for that purpose, by the said Officers or Commissioners requiring the same; that then” the Patent shall be void. If the words “or grant licences for the use of the said invention” were put in, those ten words would meet the requirements?—They would meet the requirements in case of the invention of machines, or in a case where an invention consisted of an apparatus to be employed,—but I do not think that those words would be sufficient to meet the case of construction.

2132. (*Mr. Waddington.*) In order to protect you in every case from the individual, might you not put in the words “licence for the use of his Patent”?—Yes; that would secure it.

2133. (*Lord Overstone.*) But in the case of Patents which we may describe as official Patents it would hardly be reasonable or just that, because the progressive efforts of the Admiralty had brought out something to which those vague words might apply, the Patentee should receive remuneration?—I think that it would not.

2134. (*Mr. Hindmarch.*) A clause in the Patent is that the party is to supply the articles to the Government; have you ever acted upon that?—Yes; the Admiralty have acted upon it when they could get the articles supplied reasonably. The case of M. Lapparent’s Patent is one, and Dr. Normandy’s Patent for distilling fresh water is another.

2135. (*Mr. Waddington.*) There is a section in the present Act enabling Her Majesty to grant Patents subject to any conditions which she may think proper?—Yes.

2136. It would require no alteration in the law, but merely an expression of opinion that the form of the Patent should be altered?—The Crown has the power to do it.

2137. (*Lord Overstone, to the Duke of Somerset.*) I think that the Commission understand that it is the emphatic opinion of your Grace, confirmed by the Comptroller of the Admiralty, that the existing state of the Patent Law is found practically to oppose serious obstacles to the efforts which the Admiralty is now called upon to make to improve the naval constructions of the country?—I think that it does; that it interposes a serious obstruction to every sort of progress which the Admiralty wish to make in the interior fittings of ships, or in the ships themselves.

2138. And your Grace thinks that, in duty to the public interests, it is incumbent upon this Commission to devise some means of abating that evil?—I think that it is most important that this Commission should carefully consider the best way of remedying that evil.

2139. And you are inclined to think that some clause introduced into the Patent, as now granted by the Crown, and which the Crown has the power of introducing, might be framed so as greatly to meet the difficulties which your Grace has suggested?—I think so. Of course I do not go into the question whether the Crown has or has not the absolute right to use any Patent. Assuming that it is desirable to give inventors a Patent right even as against the Crown, I think that it ought to be limited in the manner indicated by the terms in which the Patent is granted.

2140. And it is the impression both of your Grace and of the Comptroller of the Navy, that many of these Patents are granted not for inventions which are really calculated to be useful to the public, but solely as giving powers to Patentees which they may hereafter use or hope to use for their own interest as against the interest of a public department?—I think that that is clearly obvious from the terms in which their Patents are often taken.

2141. (*Mr. Waddington.*) With reference to the state of existing Patents, would it not be almost necessary to have some retrospective measure, because if the change were only made in the case of Patents issued after the report of this Commission, you would be left exposed to all your present difficulty?—I think that it would be absolutely necessary with regard to past Patents that some powers should be given to us, because we do not know what Patents are now lying dormant; we never move without knocking against several, and therefore I think that it would be absolutely necessary.

2142. For that purpose it would be necessary to have recourse to the legislature?—I think so.

2143. (*Sir W. P. Wood.*) I think your Grace mentioned that you had actually seen in the dockyard some shots which had been merely experimentally made, but which had since been made the subject of a Patent?—Yes; I alluded to what I saw in the arsenal at Woolwich. I was speaking upon the subject of Patents to the authorities there, and I was then told that Patents had latterly been taken out for different flat-headed shot, and differently shaped shot, and they showed me in a room in the arsenal a number of shots of these kinds, which had been made experimentally a great many years ago.

2144. So that they still could be made subject of a Patent, as they never had been generally used, and you might in fact be prevented from using your own shot?—I suppose they might be.

2145. (*Sir H. Cairns.*) Does it occur to you that the embarrassment arising from Patents affects the Admiralty in any way different from the way in which it affects any large ship-builder of the country, always of course remembering that the Admiralty are the largest ship-builders in the country?—I think so, because it is not worth the while of Patentees to interfere with a ship-builder; they do not apparently meddle with a ship-builder; but the moment that the Admiralty does anything, they think that there is an opportunity for compensation, because if the Patent is not good enough for a Court of Law, it may be good enough for the House of Commons.

The Duke of Somerset and Rear-Adm. R. S. Robinson.

20 June 1864.

*The Duke of
Somerset and
Rear-Adm.
S. Robinson.*

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2146. I do not know whether your Grace has in your recollection any instance in which an application to the House of Commons has succeeded?—I think that there have been cases (I do not know for certain that there have been a great many) where compensation has been applied for. Of course that is a great embarrassment to a department who have to get up the case, and to go into it with great care, and very often it is a question of great detail which it is very difficult to bring before the House, so that they will understand the details, and they may or may not take up the idea that the Admiralty have committed an act of injustice.

2147. (*Mr. Waddington.*) I believe that I am right in saying that very often individuals make claims upon a Government department which they would never think of making upon private individuals?—Very much so. The Government is quite helpless in these cases compared with an individual.

2148. (*Lord Overstone.*) Of course in prosecuting every endeavour to improve both the building of ships and the armour of ships, perfect freedom of action on the part of the persons applying themselves to it is absolutely necessary?—I think so.

2149. And these vague and undefined Patent rights oppose a serious obstruction to the action of that freedom of action?—Yes, I think that they obstruct the Department in every way. The Comptroller of the Navy can mention a case. It was considered very desirable, in building iron transports, as on account of the thinness of the coat of iron, if the ship struck against any ground the vessel might be lost, to have a second iron coat inside. That seems a very obvious thing—it was like a person putting on a great coat—and I have no more doubt that it was not infringing a Patent than if a person found himself cold and said, “I will have another coat over this;” but the moment we tried to put another iron lining inside the iron frame of the ship, we were told that that was the subject of a Patent, and we were impeded and delay was occasioned.

2150. (*Mr. Fairbairn.*) There is no novelty in that, because it has been done long ago. The “Great Eastern” has a double lining; the interior is perfectly water-tight?

(*Admiral Robinson.*) Yes; nevertheless we had correspondence and difficulty on that subject, but it was overcome.

2151. I apprehend that it would be a great relief to the Department of the Admiralty, and also to the War Office, provided they could get quit of a number of these Patents which cause such an annoyance, by reason of hangers-on claiming compensation for things which have been frequently done before?—Yes.

2152. (*Sir Hugh Cairns, to the Duke of Somerset.*) Referring to the case to which your Grace alluded just now, if that mode of putting one coat of iron upon another had been used before, the Patent would of course have been invalid; but assuming that it had not been done before, and was novel, does not it occur to your Grace that it might have in it the element of a very great improvement and a very important alteration in the practice of ship-building: that in place of having a single plank, whether of wood or of iron, an inch thick, you have three in layers one over the other, each one-third of an inch in thickness, but forming with the three a very much stronger and better protection than the single one would do?—I cannot say that it seems to me to amount to an invention. I think that it is one of those things which hardly amount to inventions. If half an inch of iron is not enough for the outside of a ship, and you think it better to put another half inch, you may put it either alongside the other or at a little distance. In one case you are told that you have infringed a Patent, in the other case perhaps you have not; but I think that none of those little progresses ought to be called inventions, or ought to be allowed a Patent.

2153. Then I understand your Grace's view, which if I may be allowed to say so, is very intelligible and distinct, to be this, that care should be

taken that a Patent should not be granted where the invention is not novel; also that a Patent should not be granted for that which, calling itself an invention, really ought not to be so esteemed; but beyond that is there anything peculiar in the case of the Admiralty, or any Government department compared with the case of any other manufacturer? I can understand your saying, as any manufacturer who came before us would say, “Do not allow worthless Patents, if possible, to get afloat, and do not allow Patents for inventions which are old to get afloat;” but would not the view of a Government department in that respect be just the same as the view of every manufacturer in the kingdom?—No; I think not, because a Government department has a number of processes which only apply to purposes of war, and to public purposes for the defence of the country. I think that those purposes ought to have special protection on the part of the public. I think that they are different from any invention made by a private manufacturer.

2154. That is to say that the Sovereign as representing the public at the same time that she confers a general monopoly for a certain beneficial end should reserve an exception in favour of the public as represented in a Government department?—I think so.

2155. (*Lord Overstone.*) Is not the view this, that the multiplicity of Patents, and especially of vague and indefinite Patents necessarily prevents the progress of invention either by private individuals or by public bodies, and that source of evil when it applies to a public body like the Navy is so great and so grievous that it over-rides the supposed benefit to the community of such Patent rights?—I think so; the great object of Patent rights to the community, as I understand, is to reward men for applying their ingenuity to progress in arts and sciences; but if instead of that every little change is to be patented, instead of advancing improvement and progress, tends very much to impede and defeat it.

2156. (*Mr. Forster.*) Would your Grace then propose to introduce into the Patent Law any exemption in favour of the Crown?—In the terms of the Patent to be granted I would propose that the Crown should reserve to itself the right of using all processes upon a payment to be made such as the Department may consider fair, or such as the Department may consider fair with the sanction of the Treasury, which would bring in a second department.

2157. Are we to understand that your Grace would propose that on account of the public service for which that Patent is used, the Crown should be put in a different position from other manufacturers by being their own buyers of the Patent, fixing their own price for it?—Yes; I understand that the Crown is so situated as regards any article.

2158. (*Sir H. Cairns.*) As I understand, it would be your Grace's view that the clause in the Patent should be expressed in terms about which there could be no dispute, namely, terms which would enable the Government to take the use of the Patent, whether in the shape of articles supplied, or in the exercise of the process upon reasonable terms and prices to be fixed “by the said Officers or Commissioners requiring the same”?—Yes. As regards the Admiralty that would meet the future, but we should also require something to meet the past cases.

2159. (*Mr. Waddington.*) I understand your Grace to say that the number of inventions already is so very great, which are described in a loose way, and which are not brought into practice, that you would not be safe if there was merely a prospective alteration without something to guard you against the Patents which already exist being started up?—I think so.

2160. (*Mr. Fairbairn.*) The evil arises from the number of Patents, and not from the number of inventions?—Quite so.

2161. (*Mr. Forster.*) Then what your Grace wants is that you should have the power of obtaining at your own terms the Patent right?—Yes, at our own terms,

or at our own terms subject only to the approval of some department of the Government, such as the Treasury, which could not be supposed to have any departmental interest in the matter. I suggest that, because I do not wish to take from inventors any merit which they really have for a *bonâ fide* invention.

2162. (*Mr. Fairbairn.*) I think your Grace mentioned that you would have no objection to the price given to the Patentee being fixed by some department, and that if not thoroughly acquainted with the subject it could be done by assessors?—Yes, by assessors who could fairly adjudicate.

2163. (*Sir H. Cairns.*) Upon the same principle as you deal with railways, by arbitration?—Yes.

2164. (*Lord Overstone.*) I apprehend that your Grace means that the same restriction which is placed upon the Patent, by which the power is given to the Government departments to obtain a machine actually invented, would be satisfactory if applied to powers patented, but which have not been developed into an actual machine?—Yes.

2165. (*Sir W. P. Wood.*) Coupled with the power of paying into Court where there is a conflict as to the payment?—Yes.

General JOHN HENRY LEFROY examined.

2171. (*Lord Overstone.*) I believe that you appear before this Commission on behalf of the War Office to explain to the Commissioners various difficulties and inconveniences which the War Office experience, arising out of the grant of Patents, for instance, for munitions of war?—I have not received any instruction to that effect, but merely to appear before you.

2172. The Commissioners have been informed that Lord de Grey, on the part of the War Office, feels that his Department is seriously inconvenienced by various difficulties arising out of the grant of Letters Patent, and which might interfere with the progress of improvements in that Department. Do you know that to be the case?—I know that pretensions are often set up by individuals which, if they were well founded and sustainable, would have the effect of impeding the public service very much. I am unable to say that the actual result has often been so.

2173. Then you are not able to state to this Commission that the War Office has experienced practically any serious inconvenience from the existing state of the law?—No; I do not think that I am competent to state that it has experienced serious inconvenience. My own experience only goes to the pretensions of individuals to interfere with certain measures which the Government thought itself entitled to carry out, in the use of its material of war, but that actual inconvenience has resulted from these pretensions I cannot state, because in very many instances we did not do the thing which the pretensions were calculated to prevent our doing.

2174. (*Mr. Waddington.*) You did not abandon it on account of the pretensions?—No; but because it was not worth doing.

2175. (*Mr. Fairbairn.*) In your Department have you sustained much inconvenience or obstruction with regard to Patents being taken out for guns and projectiles or missiles of any description?—Some time ago, for example, we proposed to make certain experiments by firing guns and rockets under water. A gentleman told us that he had taken out a Patent for firing guns and rockets under water, and in effect that we were not at liberty to make that use of them. I cannot say that the public service experienced any very great inconvenience from that, because I do not know that we should ever make any extensive use of guns or rockets in this way, nor did we in that case listen to his objection,—we did fire both under water experimentally, notwithstanding the objection.

2176. Supposing that it was essential for the public service that you should fire rockets under water, would this Patentee bring an action against the Government?—So he threatened.

2166. (*Mr. Grove.*) Then upon the evidence which your Grace has brought forward, in a very large number of cases the Government would refuse to pay anything because, in fact, the inventions would be worthless or old in the larger number of cases?—Yes.

2167. (*Mr. Waddington.*) It would be subject to a refusal in the case of Patents which you were advised were bad in law?—Yes; but that would only be ascertained by going to law.

2168. (*Lord Overstone.*) Does your Grace consider that the case, on the part of the Admiralty which you wished to submit to this Commission, has been fully explained to us?—Yes; I think that the general purport of what I wished to say has been fully brought before the Commission.

2169. Is there any further observation of any kind bearing upon this subject which you would wish to address to the Commissioners?—No; I do not think that there is anything more as regards the Admiralty which I wish to say.

2170. (*To Admiral Robinson.*) Have you anything to add to what has been already stated?—I do not think that I have anything to add to the evidence which has been already given.

The Duke of Somerset and Rear-Adm. R. S. Robinson.

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General J. H. Lefroy.

2177. (*Mr. Forster.*) Have you ever been prevented from making a similar experiment to that by such a threat of a Patentee?—We have been obliged to delay making experiments until inquiries could be made as to what the rights of the Patentee were. As, for example, some time ago we proposed to fire gunpowder in a compressed state; a gentleman said that he had patented the right of compressing gunpowder, and that we must fire our gunpowder in a granulated state, and not in a compressed state, and we were obliged to have a delay of some time before we could ascertain that.

2178. What length of time?—A few weeks. We got rid of the claim by compressing our powder without the use of any adhesive cement, which the Patentee employed. It was held to constitute a substantial difference. But had the employment of adhesive matter been necessary, Government would have found itself debarred by this Patent from the use of gunpowder in form which is sometimes of value where great power is required in a small compass, and which suggested itself wholly independently of this Patent the moment an occasion arose.

2179. (*Lord Overstone.*) Do you consider that those interruptions to which you have alluded, and of which you have given one or two examples, have formed any substantial impediment to the progressive improvement of those materials of war which are under the charge of the War Office?—I am not able to say that they have.

2180. (*Sir H. Cairns.*) Do you know whether the War Office, in dealing with the Patentees who make patented articles, have been in the habit of fixing the price of the article to be supplied to them under a clause which has been called to our attention in the existing Letters Patent, which enables a department like the War Office to require that it shall be supplied for Her Majesty's use with the patented articles, "at and upon such reasonable prices and terms as shall be settled for that purpose by the officers or Commissioners requiring the same." Supposing that the War Office want a supply of certain rockets which are patented, and which you know to be patented, and that the Patentee demands a price which you think unreasonable for them, have you been in the habit of resorting to this clause, which is found in all Letters Patent, and which in a case of that sort enables a Government department to require the article to be supplied, they fixing a price?—The business of supply does not come under my cognizance. I am not aware of the War Office having taken any advantage of this clause.

2181. (*Mr. Waddington.*) How long have you

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been in your present situation?—I have been in my present situation only a few months, but I have been connected with the examination of inventions on the part of the War Office for nearly 10 years, and have therefore seen most of the offers and proposals for the adoption of new material.

2182. Do you know of any instance in which a claim of a large sum of money in the shape of damages has been made against your office for the infringement of a Patent?—I am under the impression that Captain Blakeley demanded a very large sum of money on one occasion for the alleged infringement of his Patent in the manufacture of the Armstrong guns. But I perhaps may be permitted to explain that the War Office is a very large machine, and that the work goes through a great many channels, and one gets hold of it in a fragmentary manner.

2183. Then you cannot give the history of that case?—Not without examining the papers.

2184. (*Lord Overstone*.) Has it come within your knowledge that cases have occurred where the War Office, in prosecuting various experiments and attempts to improve machinery under their charge, have been suddenly obstructed by the setting up of Patent rights supposed to exist under vague and indefinite Patents, and of which the War Office had previously no suspicion?—A gentleman, after the introduction of the Armstrong gun, claimed the exclusive privilege of employing the system of breech-loading, which consisted in passing the shot in at the end of the bore, and having a wedge or stopper of any sort to close the bore when the shot had entered it. That objection was not sustained, but as far as that objection went, it would have prevented our going on with the manufacture of the Armstrong guns.

2185. Was that a Patent couched in very vague and indefinite language?—Very indefinite. The terms are “we claim the use of a clear passage extending from end to end of the cannon in combination with a vertical, horizontal, or other slot made across the bore or passage, and in which slot are fitted filling pieces with inclined surfaces whereby the passage through the cannon may be opened or closed when required.”

2186. (*Sir W. P. Wood*.) Were you obliged to have recourse to legal advice when you were forming your opinion upon that point?—I am not in a position to know that. The Ordnance Select Committee reports, and the War Office take what steps they think fit.

2187. (*Sir H. Cairns*.) The War Office has a solicitor, and I suppose that in the natural course of things it would go to him?—Yes.

2188. (*Mr. Waddington*.) Sir William Armstrong, I think, has not taken out Patents?—Yes he has, but he resigned his Patents to the Government, and the Government is or was the holder of his Patents.

2189. (*Mr. Fairbairn*.) Did the case which you mentioned with respect to the Armstrong gun take place after the War Office had made an agreement with Sir William Armstrong?—Yes.

2190. And the other party set up a claim?—Yes, Messrs. Church and Goddard claimed one of the features of the Armstrong gun under their Patent, the feature itself being a very general one, and one which is to be met with in breech-loading cannon of very early date; one dated 1619 in the Committee's museum is almost exactly what they patented in 1854.

2191. How did you get quit of that claim?—There my information ceases; but I apprehend that the case was too palpable to require any ceremony.

2192. I think you say that with regard to compressed powder, a claim was set up against you?—Yes.

2193. And that it created delays and obstructions to your proceedings?—Yes.

2194. Compressed powder has been in operation at the powder works at Waltham for upwards of 50 years?—Powder cake.

2195. I mean that?—But that is in a different state; that is a stage through which the powder goes

in the process of manufacture. I speak of compressing the powder again after it has been granulated. An instance occurs to me of an objection made on the part of a company to our firing flat-headed shot, upon the ground that we had a right to fire round shot, but that they had patented flat-fronted shot; this was easily evaded by making them slightly concave, but I think that no Patent should debar the Crown from varying the form or material of cannon shot at pleasure. These things arise, I am unable to say that they lead to an obstruction, because in ninety-nine cases perhaps out of every hundred we do not pay attention to the objection, but there is every intention on the part of the individuals to obstruct us and to extort money if they can.

2196. (*Sir W. P. Wood*.) Are you liable to the same inconvenience as far as it goes with reference to carriages, harness, and other implements which you use?—Yes; a gentleman some time ago claimed compensation, because we had introduced to a limited extent the use of elastic buffers to prevent the shock of the recoil in the guns; he pretended to have patented the means of stopping the recoil in that manner.

2197. (*Lord Overstone*.) The Government I think has recently become a manufacturer of its own materials to a much greater extent than it used to be?—Yes.

2198. Do you think that that change on the part of the War Office creates any further or increased difficulty with regard to Patent rights?—As far as my information goes the superintendents of manufacturing in the Royal arsenal do not find themselves much inconvenienced by Patent rights; whether it is that they offer reasonable or liberal terms to Patentees I cannot say, but they do not find inconvenience from that source.

2199. (*Sir W. P. Wood*.) What is the office which you fill?—I am President of the Ordnance Select Committee.

2200. (*Lord Overstone*.) Did not the Ordnance Select Committee in a report of theirs introduce the statement that “they would venture to suggest a general enactment that no Patent right shall be of force to prevent the Crown from manufacturing or repairing warlike material in its own departments, or from employing for such purposes the materials, forms, processes, and machinery found most suitable, leaving the Crown in the same position as any other purchaser in respect to articles not repaired or manufactured in Royal establishments?—That is extracted from one of the reports of the Ordnance Select Committee.

2201. Does that report meet with your sanction and concurrence?—It does.

2202. Do you think then that there is a sufficient ground for reserving out of every Patent granted a right to the Crown to use the patented article without remuneration to the Patentee?—Yes, to this extent that the remuneration to the Patentee should in my opinion depend wholly on the bounty of the Crown, and be proportioned by reference to the amount of advantage which the public service has derived from it, which it is quite impossible in many cases to determine beforehand. Instances have occurred in which large prices have been paid for things which after all have been found perfectly valueless. Generally speaking inventions and improvements in warlike material are little matters of detail, which enter as a component part into some other and larger thing. Very often we have a choice of details. Perhaps out of six which are available we may adopt a particular one, in which some individual may have a right of property. If that one had not been adopted we could still have done the thing in another way; and after all that is a small detail in many instances, in the result which is arrived at: it is a small detail contributing only towards some general result which was not in the view of the Patentee when he took out the Patent. I can quote a recent case in which a gentleman laid claim to a particular mode of rifling; he asserted a right of property in a particular mode of rifling which he had

not produced, and which had been produced without the slightest communication with him, or the slightest knowledge or idea on our part that he had anything to do with it. It turned out that a particular curvature was given to the edge of one of the grooves which practically represented the curvature which he had given to his grooves, and he chose upon the strength of that to claim the whole. We could have given 50 other curves equally well, and it was of no value whatsoever.

2203. (*Sir H. Cairns.*) Would not your proposition have this effect, that as regards certain inventions, it would be a prohibition against having any Patent at all. Take, for example, an invention with reference to the munitions of war. No person in the country requires munitions of war, or ought to require munitions of war, except the Government,—besides, of course, the question of foreign exportation,—but with regard to consumption in this country, no person requires, or ought to require, munitions of war except the Government. If you say that for any invention with reference to a munition of war, the Government, which is virtually the only customer for it, shall be supplied gratuitously, except so far as it chooses, out of bounty, to make compensation to the person supplying it, is not that equivalent to saying that there shall be no reward to that inventor at all, and that he shall not take out a Patent?—I do not go so far as to say that the Government shall be supplied gratuitously, if it finds it to its interest to resort to a contract, the contract should be made subject to the rights of the Patentee.

2204. But that if the Government manufactures for itself, it shall do so gratuitously?—That it shall have the right to use any machinery, and take advantage of any warlike material in its own manufactories, without remuneration to the inventor, though I do not mean to say by that that the inventor should not get remuneration, but I think that it should turn entirely upon the bounty of the Crown as to what should be awarded to him, and not be necessarily proportioned to the scale of the Government manufactory, or any fanciful estimate of the public importance of the improvement.

2205. If the Government had two courses open, one to make a contract at the Patentee's price, and the other to manufacture for itself without any price at all, it of course would manufacture for itself, and would not the result be that the Patentee would be simply left dependent upon the bounty of the Crown?—There are very few articles in large use which the Government exclusively manufactures. I can hardly name any.

2206. That is as things at present are, but in the altered state of things do you think that that would apply?—I think that the jealousy against Government manufactures would always apply against its supplying itself exclusively from one source.

2207. (*Mr. Forster.*) Do you not consider that, supposing you obtained this power, you would have an advantage given to your manufactory over the private manufacturer, who also supply the Government, and do you not think that that would increase the jealousy?—I think it desirable and reasonable for the Government not to resign that advantage. The Government is resigning an advantage in granting the Patent, and I think that it is a reasonable stipulation for the Government to make that it shall not be impeded in its own works and manufactures by any rights under the Patent.

2208. (*Lord Overstone.*) Your view I understand to be this, that the Government in granting a Patent right, grants a right to the Patentee over all other subjects of the realm, because such an exclusive right would be beneficial to the public interests, but that the public interests with regard to the transactions of the Government require that they should be exempted from such obligation?—Yes; that is very nearly my view of the matter.

2209. (*Mr. Grove.*) Then what encouragement would there be except the chance of bounty to those

inventors whose inventions dealt entirely in munitions of war; there would be no encouragement, for instance, except the possibility of getting something in the way of a gratuitous bounty from the Government?—I do not think that they need to be encouraged. I do not think that the application of invention to those subjects needs the slightest stimulus or encouragement, but on the contrary I was about to say that it is rampant.

2210. (*Sir H. Cairns.*) Perhaps you have not observed the other direction so much, but might it not apply to inventions of all kinds at the present day that a stimulus is no longer needed, but that invention as you say is rampant?—I think so.

2211. (*Mr. Forster.*) We had from Sir William Armstrong himself precisely the evidence which you have given, that he found in his own manufactory that he was constantly interfered with by the existence of Patents of which he knew very little, and which prevented him from trying experiments and going on with the inventions which he otherwise would have done. Do you not think that if you had this power given you either by buying the Patent at no price at all, or of buying it at your own price, it would put you in a more favourable position with your manufactory than you are put in at this moment?—As regards Sir William Armstrong personally the cost of the production of the material of war connected with his system of artillery, has never been enhanced by any Patent of his. He resigned all right to his Patents, and the Government has never that I am aware of paid him any royalty or in any other way.

2212. He in working his business finds that the Patent Law is a constant tax him upon?—Yes.

2213. If you were able to work your business without the Patent Law being a tax upon you, as you say it now is, would you not, in so far as you got that special exemption, be put in a favourable position as regards Sir William Armstrong?—Yes, undoubtedly. If a Government department can make a thing under a Patent without paying a royalty to the inventor, it must be deemed so far an advantage over those people who must pay a royalty.

2214. (*Sir W. P. Wood.*) You think that the defence of the country is a sufficient advantage to allow of that distinction?—Yes; and I think that a slight sacrifice should be inflicted to get rid of the inconveniences, and the correspondence, and so on, arising from these unfounded claims.

2215. (*Mr. Hindmarch.*) Supposing that the Crown had a right given to them by law so as to insure their making these articles, would there be any difficulty in ascertaining by some process the amount of remuneration to be paid to a Patentee who conferred such a benefit?—The expectations of Patentees are very extravagant, generally speaking, and prior to trial it is very difficult to determine at all what is the value of an invention. As an example, a gentleman some time ago made a great improvement in cooking apparatus, and he assessed his own reward at a large portion of the whole saving in fuel which might be effected by the application of this improvement to an enormous extent upon the whole military consumption of the Crown, which would have come to many thousands of pounds. Such an improvement should not be assessed by the value to the Crown, but by what it cost the originator in intellectual labour or previous experiment, and its importance in a large sense.

2216. Supposing anything to insure the Crown a right to make and use a gun of a new character, the Crown having got that right by law, would there be any difficulty in ascertaining the amount of reward which the person was entitled to, so as to award it to him by some process of law which might be adopted?—The War Office is constantly in the habit of consulting the Ordnance Select Committee as to the proper sums to be given for certain inventions. I can only say that we do practically find extreme difficulty in getting any guide whatever as to what is to be considered the value of an invention, and scarcely

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ever succeed in satisfying the parties, however liberal we may conceive we are.

2217. (*Mr. Forster.*) Then are you of opinion that an inventor ought in the case of the Crown to be paid according to the labour which he has bestowed upon the invention, and the ingenuity which he has shown in it?—Yes, and also to a moderate extent for the benefit which the public derives from it; but the Crown being an enormous consumer of certain articles, and very often having the choice whether they will adopt A.'s invention or B.'s invention, I think it is very reasonable that if they finally adopt the invention of A., he shall have his remuneration assessed on the relative rather than the absolute value of it.

2218. But of course you are aware that in the case of what is called user of Patent rights the price is fixed according to the value of the Patent between the buyer and the seller, and that the labour and skill bestowed upon it have nothing to do with it?—Yes, but ordinary customers act with a view to their own pecuniary benefit, and know very well what a thing is worth to them; the Crown is in a different position, and the pecuniary bearings of these questions are not so readily determined.

2219. (*Sir H. Cairns.*) Would you think that if there was a Patent which was sold in the market, as between buyer and seller, at a price which was quite unremunerative, having regard to the amount of labour and ingenuity and time which had been bestowed upon it, the Crown should pay a higher price than it sold for in the market, because the price for which it was sold in the market was not a fair remuneration?—No, certainly not.

2220. Your view would be that the Crown should pay a sum not exceeding what it sold for in the market, and not equal to the sum for which it sold in the market, unless that sum was what the Crown thought fair, having regard to the labour and skill bestowed upon it?—My general opinion is, that if the Government, in its own view of the public interest, thinks it advantageous to make use wholly or in part of a particular invention, and if after a short time it is found that public economy and advantage are derived from the use of that invention, I should then make an equitable, reasonable, and liberal compensation to the party by whose invention the matter was brought into operation; but that party should not be permitted to say, "You shall not use this invention until you pay me such terms."

2221. (*Sir W. P. Wood.*) Do you not in times of public emergency require to manufacture a very large stock of articles in a very short time?—Very frequently.

2222. Is it desirable that in such cases as those you should be delayed by having to make inquiries into Patent rights, and assess compensation?—Certainly not.

2223. (*Mr. Fairbairn.*) I think you said that if the Government manufactured the same article at the arsenal they should pay nothing. It appears to me that that would be exceedingly unfair if it was a valuable article?—Supposing that a man invents an improved rifling machine; if the Government wish to buy those machines of that man, they must pay him whatever he chooses to demand, but if they make use of the machines without applying to him, I think that he should have no power to step in to prevent them, but that they should afterwards say, "We award this sum as a fair sum for the advantage we have derived from the use of your invention." I think that the man should have no right beforehand to interfere with the Government making warlike material in the best and cheapest manner that they can, and using anybody's Patent that they choose. This applies especially to experimental inquiries antecedent to the adoption of processes or inventions, which are now much impeded.

2224. (*Mr. Waddington.*) Would it meet your views supposing the Government had that right of using any invention which they thought proper, if the remuneration to be given was left to the arbitra-

tion of indifferent persons instead of leaving it to a department of the Government?—Yes; I should be quite satisfied with that.

2225. (*Lord Overstone.*) Is it your principle that in consideration of the fact that the Government want many warlike materials, they should not be subject to the same obligations as private individuals?—Yes.

2226. You rest your case upon the ground that the Government is a manufacturer of those warlike materials which are essential to the safety of the country?—Yes.

2227. You do not go so far as to say that the existence of these Patent rights against the Government embarrass the Government in their efforts to improve their machinery?—The term "embarrass" is a somewhat vague one. I should say that there is no department concerned in the matter who would not say that they have been a good deal embarrassed by having troublesome correspondence and a great deal of extra labour, but as to having prevented the Government from doing what they wanted to do, I do not think that any public inconvenience of that sort has arisen.

2228. (*Mr. Fairbairn.*) Supposing that a rifle or a rocket or anything of that kind was made upon an entirely new principle, I suppose you would consider that the inventor was entitled to some remuneration where the same machine as that which manufactured the present rifle or rocket would apply to the new invention. Under those circumstances it is not the machine, but the invention itself for which you would pay the inventor?—I do not quite follow your question.

2229. Supposing that there is a new principle of rocket, and that you have machines for manufacturing that rocket you may have three or four machines for that purpose, but the novelty is in the rocket and not in the machine. In that case the inventor of the new system of rocket would, I suppose, be entitled to remuneration?—You may illustrate that question of rockets by a case now before us, namely, a rocket proposed by a gentleman who has given great attention to rockets. I think that there is nothing in his Patent which should prevent the Government from making that rocket in any quantity which they like, but that if they do so, and if that rocket is issued by tens of thousands, and if it is proved to be better morally and equitably, to give him a compensation for it, but in my opinion he should have no power to interfere with their using or making the rocket when they like. The value of an invention is generally speaking a thing which is to be determined by subsequent trial, and very often it may turn out that there has been a mistake, and that the thing has not succeeded at all, which was the case with the rockets he first produced.

2230. (*Sir H. Cairns.*) Do you think that it would be an equitable thing to make the term of a Patent for munitions of war shorter in duration than that of any other Patent. For example, other Patentees having the term of 14 years, would you think it equitable that for munitions of war the term should be 10 or 12 years only?—No; I do not see why that should be the case, because it would prevent the Patentee from deriving advantages from any other customer than the Government. Now there is scarcely any munition of war to be named of which the Government has the exclusive user.

2231. Would not what you propose be exactly the same thing as saying to all such Patentees, "There is in an ordinary case protection and all monopoly for 14 years; but you shall have it only for 12 years, because the subject of the Patent is a munition of war." Does not your proposal come to the same thing as saying "With regard to munitions of war of which the Government may be not the only but the largest customer, you shall be dealt with on a plan different from all other Patentees; you shall be subject to an obligation of selling your Patents at a price either to be fixed

“ by the Government, or to be fixed by arbitration.” Would not many Patentees say that that was equivalent to taking off from the value of the monopoly than the rockets previously in use, they are bound, to the extent of two or three years?—That would be the case to some slight extent, but I think practically not very much so.

2232. (*Lord Overstone.*) Is it not your objection that these charges against the Government for the use of inventions with regard to munitions of war tend to check the flow of the application which is given to the improvement of those munitions of war?—They tend very much to check it, and to impede that free inquiry and experiment by the responsible officers of the War Department which is so desirable for the sake of the public service.

2233. (*Mr. Forster.*) In the case of any inventions or improvements which are made in the War Office establishments, and their manufactories, do you make use of the Patent Law yourselves, do you take out Patents?—It was proposed in a single instance that the Secretary of State should take out a Patent to prevent a Patent being taken out by anybody else, and being used against him in a little matter which we thought original and of importance, but it was not taken out.

2234. (*Mr. Grove.*) Under what power, statutable or otherwise, do you dispose of bounties in the shape of rewards to inventors. Is it solely discretionary, or under what power do the War Department, for instance, give the large sums of money which they think are proper rewards to inventors for their inventions?—It is entirely in the discretion of the Secretary of State. In the last few years there has been a small sum provided in the annual estimates; previously to that the sanction of the Treasury was obtained in every instance.

2235. (*Sir H. Cairns.*) Do you allow persons who are working for you in your Departments, if they come upon an invention, to take out a Patent themselves?—There is no existing regulation against it, and it has been done in many instances.

2236. You are aware, I suppose, that most of the Railway Companies who have large manufactories have a standing law that all inventions by their work-

people shall escheat, as it were, to the company?—The Commissioners will probably allow me to read a short passage from a report of the Ordnance Select Committee on this subject in answer. What I am now about to read originated in these circumstances:—An officer employed in the manufacture of small arms devised and patented a small improvement. He afterwards died, and his widow claimed a large sum of money for the Patent, in consequence of this small improvement having been adopted, although no such claim was made by him at the time; the War Office desired the Committee to express an opinion with regard to the inconveniences arising from that state of things. The passage in the report of the Committee is as follows:—“With respect to the patenting of inventions or improvements of manufacture by servants of the Crown, who have been indebted for their opportunities of devising such inventions or improvements to employment in connexion with manufacture, supply, or expenditure, the Committee conceive that the first remedy is a moral one, the displeasure of the Secretary of State, proceeding to the length of dismissal from civil employment, if necessary, when such Patents are applied for without his permission; and that all suitable opportunities are taken of affirming the principle that it is contrary to the honourable understanding subsisting between the Secretary of State and those employed under him, that officers or others should patent anything against the interests of the public. The second remedy might be to make all such Patents invalid on proof that the inventor or party beneficially interested was at the date of the registration in the employment of the War Office or other military department, and neglected to obtain the sanction of the Secretary of State to his application to the Commissioners of Patents.” That was the recommendation of the Committee.

2237. Has anything been done upon that recommendation?—Not that I am aware of; no legislation has been based upon it.

2238. (*Mr. Forster.*) Was a royalty paid in the case to which you have alluded?—A sum of 1,500*l.* was paid to the representative of the Patentee.

Adjourned.

Friday, 24th June 1864.

PRESENT :

The Right Hon. LORD STANLEY, M.P.
The Right Hon. LORD OVERSTONE.
VICE-CHANCELLOR SIR W. PAGE WOOD.
HORATIO WADDINGTON, ESQ.

W. R. GROVE, ESQ., Q.C.
W. M. HINDMARCH, ESQ., Q.C.
WILLIAM FAIRBAIRN, ESQ.

THE RIGHT HON. LORD STANLEY IN THE CHAIR.

WILLIAM CARPMAEL, Esq., further examined.

2239. (*Chairman.*) You appear here, I think, on behalf of the War Department?—At the request of the War Department.

2240. You are the author of a book on Patent Law?—Yes.

2241. You are, therefore, familiar with the proviso which was introduced early in the present century with a view of ensuring the public service being supplied with patented inventions at reasonable prices?—Yes.

2242. Probably you are able to say how far that proviso has answered its purpose?—So far as the Crown has required supply, in certain departments, it has answered its purpose fully; but some few years back it was found wanting in this respect, that only officers of certain departments were provided for in the proviso, the Master General of the Ordnance and the Lord High Admiral were the two parties originally provided for. A case arose which did not come within either of those departments, and no pro-

viso was in the Patent. At that time the proviso was only put into a very few Patents, namely, those which on the face of them showed that they applied to the ordnance or the navy, it was afterwards determined to alter the proviso both as to its extent and also as to the wording of it. It was then worded so as to supply Her Majesty's service generally, and the officer administering each department was to judge of the propriety of the price. No case has ever arisen, so far as I am informed, of a dispute as to the supply between the Patentee and the Crown's officers, and it has been attended with great success. In the particular case to which I have alluded, some preserved vegetables, I think, were wanted for the Crimea, and there was no proviso in the Patent enabling the Victualling Department to ask for a supply. The proviso is now inserted in all Patents.

2243. Am I to understand you to say that by that proviso the departments of the Crown have the use of every patented invention upon a payment, the

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amount of which is fixed by the department itself?—To a supply of the patented article, but not the right of user. That is the distinction.

2244. Who fixes the price?—It has heretofore been done by agreement. The officers have approved of the prices proposed, and have ordered the articles at those prices.

2245. If I understand rightly, everything turns upon the question of price; because an article may be virtually made useless by a prohibitory price being put upon it, if that is left to the discretion of the seller?—In that case the officers administering the department have, according to the proviso, the fullest power of saying what the party shall receive.

2246. That is the question which I wish to put to you, namely, whether the discretion rests in the last resort with the officers of the department, or whether they are bound to refer it to the arbitration of some impartial person?—I consider that the officers administering the department have the fullest power to decide that question.

2247. That is to say, that they may purchase any patented article, giving what price for it they think fit?—Yes; but still as they are public officers acting as trustees between the Crown, and the Patentee, for the public, I cannot imagine that a case would arise where the head of a department would wish to have articles at an unreasonable price. The usual mode has been that the Patentee has sold to the Crown at the same price as to other parties, or at any other price agreed upon between the officers and the Patentee.

2248. Do you find that buyers and sellers always agree as to what is a reasonable price?—They have done so in these matters up to the present time. I do not know an instance to the contrary.

2249. But when you say, as I understood you to say just now, that there has been no dispute between the department and the Patentee, does not it come to this, that no dispute can possibly arise, inasmuch as the department have the power of settling the matter in whatever manner they think fit?—That may give an inducement to agreement; but, generally speaking, I think that when an article is purchased by the public as well as by the Crown, it has a market price for all parties. That market price is reduced very constantly to private purchasers (and I see no reason why it should not be so to the Crown also), when the purchaser agrees to take large quantities of the article.

2250. (Lord Overstone.) Are you aware of any strongly expressed cases of dissatisfaction and complaint on the part of the Patentee at the prices awarded to him for the articles thus taken by force of law?—No; I have known many inventions used without licence from the Patentee by the Crown's officers, and many disputes arising in consequence; but compensation has been given to the Patentee for the use of his invention. The proviso only provides for the supply of the article; but the Government have now become in their departments very large manufacturers, and therefore they do not in some cases want to purchase the article; but they want to make it.

2251. As I understand the case it is this, that the law has hitherto given a power to the Government departments which it does not give to an ordinary member of the public, namely, the power of taking the articles which they require from the Patentee at prices to be named by the Government?—Quite so.

2252. But the Government departments having now become manufacturers as well as consumers of articles, they want an extension of the same power, and the same permission to them in their new capacity?—That I understand to be the fact, and I think that it is unobjectionable so far as my experience goes of the past working of these matters.

2253. In the transactions between the Patentee and the Government departments as consumers, fixing of their own will and judgment the price which they think proper to pay to the Patentee, is it within your knowledge that that arrangement has given rise to

serious and strongly expressed discontent and dissatisfaction on the part of the seller of the article?—I have never heard of it. The only complaint which I have ever known has been where a Government department has used an invention.

2254. (Mr. Grove.) Will you mention the complaints which you have heard where the Government has used an invention?—There are many cases where the Government in their manufacturing departments have used inventions which the parties having Patents have complained of as being their patented inventions, and they have then asked the Government for remuneration for Patent rights by reason of that user.

2255. (Lord Overstone.) Can you say how the Government have dealt with those claimants?—In some cases the claims have been enormous and exorbitant. In those cases the Government have usually taken the opinion of their own officers, as to the benefit which they have derived, and also the opinion of myself and others, with reference to the validity of the Patent, and what would be a reasonable remuneration to the Patentee as a Patent rent for the user by the Crown.

2256. Can you state any particular case of excessive demand on the part of a Patentee for an invention used by the Government?—In the late case of the Queen at the suit of Clare, 500,000*l.* was asked by the Patentee for a supposed use of his invention on board six of Her Majesty's ships. Assuming that he was right, and that the Government had used his invention, I think that that would have been an enormous sum for any merit there was in his invention, supposing there had been any. But as it turned out what he asked the remuneration for was not his Patent.

2257. (Chairman.) I understand you to propose that the power vested in the Crown to purchase Patent inventions at their own price should be extended to the purchase of the right to use any Patent whatever?—My feeling is, that the Crown's officers in the manufacturing departments ought to have the fullest power to use for the benefit of the Crown and the public every patented invention. In my opinion it should be reserved to the Crown that its officers and contractors, for the benefit of the public, should have the right of using all inventions. I think that the spirit of the proviso as it now stands should be carried out by leaving it to the heads of departments to assess what is a fair Patent rent to be paid for the use of the invention when they have ascertained the value of it to the public.

2258. (Mr. Fairbairn.) To whom would you entrust that power?—To the heads of departments, who, I assume, would do it by themselves or by their assessors.

2259. Would it not be rather dangerous that the Government should have the power to dictate their own price to the manufacturer of an article which they consume?—I think not, because I cannot imagine a public officer placed in that high position doing a wrong act. He would do it in the face of the public, and the public opinion would be too strong to admit of his doing so with impunity.

2260. The Government do not always deal with the Patentee, but they deal with the manufacturer?—That is when they ask for a supply of articles. In that respect, speaking from 40 years' experience, I have never heard a complaint on a manufacturer's behalf that the Crown officers had not paid him fully for the benefit derived from the patented invention.

2261. (Mr. Waddington.) The principle for which you contend has been recognized by the legislature?—Yes, ever since 1800; and in practice it has answered most fully, and I have no doubt that justice has been fully done.

2262. (Mr. Hindmarch.) Then would you carry it out so far, that supposing that an invention which was used in constructing a ship, or any other proceeding by the Government, should turn out to be frivolous or of no value, it would be a part of the system to give no remuneration?—Certainly. I as-

sume that a gentleman at the head of a department, standing high before the public, having a case of that kind brought before him, would call before him the officers of the department who were working the manufacture, and, if necessary, would call others, and would hear the Patentee, and those whom he brought before him, and would decide to the best of his ability what was a fair remuneration. The kind of evidence which the Patentee would bring before him would be, "I receive for such and such privileges from A, B, C, and D, manufacturers of the said article, such and such a remuneration," or "such and such a Patent rent." That would be a part of the ingredients upon which the head of the department would have to decide.

2263. Would you put it upon this footing, that if the invention, whatever it was, had conferred a benefit upon the public, the Patentee ought to be remunerated?—That is my feeling.

2264. And if no benefit had been conferred, there would be no remuneration?—That is my feeling also.

2265. (*Sir W. P. Wood.*) I suppose you are aware that the clause requiring the patented article to be supplied to the Crown upon the terms which have been alluded to, has been inserted in the Patent upon the mere right of the Crown to impose this condition, without any Act of Parliament?—Yes.

2266. You propose that the Crown in future should further protect the right of the public by inserting a clause as to user upon the same inherent power of the Crown to impose conditions?—Yes; I entertain no doubt of the Crown having that power, and the law officers of the Crown, from my own experience for 40 years, have from time to time varied the provisos and conditions upon which the Letters Patent are granted. Every Warrant contains directions from the law officers to put in all such conditions, provisos, and prohibitions as they may consider just and necessary to carry out the will of the Crown.

2267. (*Mr. Hindmarch.*) And the late Patent Act reserves to the Crown all rights which it had previously?—Yes. In 1740 a special provision was put in under the direction of the Crown with reference to the Bottomry Acts; that was got rid of when the Bottomry Acts were repealed. I drew the clauses for the, then Sir John Copley, who was at that time Attorney-General, for the alteration with regard to them. In one Patent which has been granted, there is a proviso that no payment shall be made for the future supply of the patented article to the Crown, because the Crown had already paid considerable sums of money for the user.

2268. (*Mr. Fairbairn.*) How do you propose to deal with the question in the event of any difference of opinion between the Government and the Patentee?—It is to be a final judgment. I hold that the head of the department is to form a final judgment, so that there can be no appeal from it. I put it upon the public character of the individual.

2269. (*Mr. Waddington.*) If it were otherwise, it must go to some tribunal, and therefore the Crown would be in no better position than an individual?—Just so. The principle which I go upon is, that I think it for the benefit of the public that there should be no let or hindrance to the Crown using for the benefit of the public every invention which comes out, if the public service requires it.

2270. (*Lord Overstone.*) You think that the restriction as to the use of the patented article is a limitation of the boon conferred upon the inventor for good and sufficient reasons, and that it is a reasonable restriction as regards those departments which act for the public interest and the safety of the country?—Yes; and I also think that it is for the benefit of the Patentee. The difficulty under which the Patentee now labours is as to whom he shall attack in the event of his thinking that his rights are infringed by the officers of the Crown. I have advised a very large number of Patentees, and I sincerely believe that they would only be too glad that a proviso should exist in the Patent, directing them where to go, and

how to ascertain to what extent they ought to be rewarded, in place of having to raise bills of rights and other proceedings against the Crown.

2271. (*Mr. Grove.*) In any other case except that of the Crown, would you recommend the Patentee to go to the person using his Patent, and paying him rent to fix the price?—Certainly not.

2272. (*Chairman.*) Does not it come in principle very much to this, that the Crown should have the use of the Patents without any payment?—No, it does not go to that. I think that it is highly desirable on behalf of the Crown, and through the Crown on behalf of the public, that every inducement should be offered to bring men of genius and of peculiar thought to introduce inventions for the benefit of the public through a public department.

2273. I understand the principle being laid down that the Crown shall have a right to use inventions without payment; and I understand the principle being laid down that the Crown shall have a right to use inventions upon payment to be decided by arbitration, or by some other form of reference to an impartial person; but I do not understand the payment which a department is bound to make, where it is entirely optional with that department, whether the payment shall be substantial or a merely nominal one. Perhaps you now see the difficulty?—I see your Lordship's difficulty, but in answer to it I say that for 60 odd years the provisos in Letters Patent have answered exceedingly well and satisfactorily, and then I say that I cannot imagine an officer at the head of a department of Her Majesty's service acting so unfairly towards a Patentee as to give a nominal or even unreasonably small sum compared with the benefit of a patented invention which he must have ascertained that the public have received through that department.

2274. (*Mr. Fairbairn.*) In fact, you would give the whole power to the Government to determine the compensation to be paid?—Yes; it being done before the public.

2275. (*Mr. Waddington.*) It being subject to public opinion, and to an application to Parliament in case of great injustice?—Yes. The public would so control it, that I have no anxiety, and I do not think that Patentees would have any anxiety, at that power being in the heads of departments.

2276. (*Mr. Fairbairn.*) In cases of infringement of a Patent by the Government to a certain extent, whether it turns out to be a good Patent or not, how would you deal with that matter under your proposal?—I say that the Government are to use it to any extent without inquiry or observation from any one, and that when they see that they are deriving benefit from the Patent, then they shall inquire what is a reasonable and satisfactory payment to be made to the parties whose invention they are using.

2277. (*Chairman.*) Then it seems to me that, as far as the law is concerned, it would be more in accordance with the principle which you lay down to strike out all mention of payment?—No, I think not.

2278. Because, if the department were greatly benefited by the process of an inventor, it would always be in their power to reward him?—I think there is a material difference in that. I think it should be the duty of the head of a department, upon finding that the department is using a patented invention, to inquire how much the public have benefited, and then to award a payment in proportion to the benefit.

2279. (*Lord Overstone.*) Your view is that the Government, like the rest of the public, should pay a proper price for whatever they use, but that in the case of the Government the decision of that price can upon the whole be more safely left in their hands than in those of any public tribunal?—That is my opinion.

2280. And in that opinion, you consider that you are fortified by your experience of the law up to the

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Esq.

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time to which it has now gone, having reference to the consumption of articles?—Yes.

2281. And you see no reason why the principle which has worked well in that case should work ill when extended to the use of inventions?—Certainly not.

2282. (*Mr. Waddington.*) Would it not be perfectly competent to the Crown in point of law to insert a condition that the Crown should have the use of the machines, or of the Patent, for nothing at all?—Yes, and it has been done in one instance.

2283. (*Chairman.*) Do you conceive that, under such an arrangement as you propose, there would be much willingness on the part of Patentees to bring their inventions to the notice of the Government?—I think that there would be every inducement to them to do so, and I believe that it would lead to a good feeling between Patentees and the Government departments, which does not exist at the present time. When Patentees have articles for sale they go to the Government departments, the same as any other salesman, and I never heard of an instance where there was any difference of opinion between the purchaser and the Patentee.

2284. But do you think that a salesman would be very anxious to show you or me his goods, if we might take them, paying 6*d.* for that which he might consider to be worth a guinea, and if he had no right to refuse them?—There I cannot go with your Lordship; I start with this proposition, that the Government should have the fullest power to use every invention for which Patents are granted, and that it should be a duty put upon the heads of departments to investigate whether a patented invention has been beneficial to the public through the department, and that if it has, then a reasonable compensation in the nature of a Patent rent, should be paid to the Patentee.

2285. Is there any other suggestion, which you can offer to us bearing upon this subject?—I do not remember any other. My opinion on this subject I expressed many years ago, and have done so from time to time to the different law officers of the Crown; therefore it is not an opinion hastily formed, and in addition to that, when I have been consulted by

either of the departments, and I have come in communication with them, I have appended it as part of my report, that this subject should be brought before the law officers of the Crown, in order to have it dealt with upon principle.

2286. (*Sir W. P. Wood.*) Have the cases to your knowledge been numerous in the War Department of complaints of interference with Patents in respect of improvements or inventions in those matters, which are the subject of consideration on the part of the War Department?—I have had several cases from the War Department with regard to the validity of Patents, and with regard to the proposed charges of the Patentee for the use of his invention, but there have been no difficulties in settling those cases, with the exception of the one in which the Admiralty was concerned with reference to Mr. Clare's Patent.

2287. Practically you cannot speak to any special amount of inconvenience which has hitherto occurred?—No, and I think that I should have known of it if it had arisen.

2288. (*Mr. Grove.*) In Lancaster's case there was discontent, for the Government officers appeared and opposed the prolongation of the Patent conditionally, wishing that there should be a stipulation that the War Department should have the patented articles without paying any premium, and it was not granted by the Privy Council?—There the Crown had no power of dealing with Mr. Lancaster for the use of his invention, but they had the power of dealing with him if he supplied them with guns, or articles connected therewith; therefore that was a question which ought properly to have gone to the head of the department, to have taken the responsibility under the proviso as to a fair payment for anything which the patentee supplied. I do not know the facts of that case, because it has not been before me.

2289. (*Mr. Hindmarch.*) In those cases in which you have been called upon to advise the departments, have you done so upon mechanical matters solely, and not upon chemical matters?—I have advised both as to chemical and mechanical matters, but very little has arisen with regard to chemical matters so far as my knowledge goes.

C. M. Clode,
Esq.

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2290. (*Chairman.*) You are Solicitor to the War Department?—I am.

2291. We understand that objections are raised by the War Department against the present working of the Patent Law?—Difficulties arise no doubt from the present proviso having been framed at a time when the Department purchased its own supplies, and that is very seldom at present the case, the result is, that we have to deal with Patentees for the purchase of their inventions without any means of assessing what the price should be.

2292. You have no advantage, as the law at present stands, with regard to the purchase of inventions over any private purchaser?—None whatever.

2293. Therefore, it is not only a question of prices but if a Patentee chooses to refuse you a licence to use his invention, you have no power?—We are then entirely powerless; of course we make this exception with regard to the nature of the Patents to which this objection applies; they are Patents for instruments and munitions of war. The Crown has a paramount duty to defend the State, and when it places in the hands of a Patentee a monopoly of the best invention for defence the Crown to that extent abrogates its duty in favour of the Patentee. With regard to the Statute Law up to a very recent period, a Patent for an instrument or munition of war was invalid; it was rather more than invalid, Patentees were exposed to penalties. Regarding a monopoly for an instrument of war, the last Act is to the following effect, it is an Act of the 1 James 2., chapter 8, and I think that it was in force until Mr. Deacon

Hume repealed and consolidated the Customs Acts, and it was dealt with entirely as a Customs Act. The third section of the Act James 2., is to this effect: "Provided always, that if any person or persons whatsoever, bodies polittique or corporate, shall by colour of this Act or otherwise, obtaine from His Majestie, His heires or successors any letters patents, license, or grant for the sole makeing or importing any gunpowder, arms, ammunition, or other utensils of war, and shall putt the same in execution, or by colour thereof molest or hinder any person or persons who lawfully make any the things before mentioned in this kingdome, or shall obtaine any letters patents, licence or grant for the importing of gunpowder, arms, ammunition or other utensils of war by way of merchandize, to make profit thereof other then for the immediate furnishing of the publike stores of His Majesty, His heires and successors that then the person and persons so offending shall incurr and sustaine the paines, penalties, and forfeitures contained and provided in the statute of provision and præmunire made in the 16th yeare of the raigue of king Richard the Second, and be disabled to hold any office or employment under His Majestie, His heires and successors, and all and every such letters, licence, patent and grant, and every of them for the sole makeing and importing the said commodities shall be void to all intents and purposes as if the same had never beene had or made, any clause of *non obstante* or other provision or covenant to the contrary thereof in any wise notwithstanding."

2294. (*Mr. Waddington.*) That was to prevent the Crown from granting these monopolies?—Quite so, being against public policy.

2295. (*Mr. Grove.*) Have you the clause of the repealing statute?—The Act is 6 Geo. 4. c. 105. "An Act to repeal the several Laws relating to the Customs," and the sections are 26 and 444.

2296. (*Sir W. P. Wood.*) Did it simply repeal the whole act?—Yes, without any reference to the provisions of this section.

2297. That act having Customs clauses in it?—They deal with it entirely as a Customs Act.

(Witness handed in copies of Statutes B.).

2298. (*Chairman.*) Passing from the question of former legislation, we understand that the matter at present under discussion is whether a power shall be given to the War Department to purchase inventions in the same manner as they now purchase patented articles?—Yes. At present it stands on "reasonable price." I have taken some pains to ascertain the fact, and I find that we have never been able to control the "reasonable price" of any Patentee. We come to his own terms. The Director of Contracts will confirm my statement. I asked him, "In your experience have you ever assessed the terms or price which a Patentee has charged you for his patented article." He said, "No; we have certainly refused to take it if we thought it excessive." In the evidence before the Ordnance Committee, 1863, it appeared that Sir William Armstrong's contract was to supply the Government at "a fair and reasonable price," those were the words of it, and in the event of difference, that question was to be determined by the law officer for the time being (p. 488 of Report).

2299. That is not by the head of the department which is itself interested?—It is not. That was by Sir William Armstrong's own agreement. With regard to the "reasonable price," to illustrate the difficulty of arriving at what is a reasonable price, if you look at the supply as taken by what Sir William Armstrong justly considered to be a reasonable price when the invention was first promulgated, we should have paid for supplies 757,000*l.* The prices were afterwards re-adjusted in the year 1862, and taking our supplies according to that we should then have paid 320,000*l.*; it is simply about half, and our actual supplies taken at the price which we were charged, cost 416,000*l.* This shows the difficulty of agreeing upon the "reasonable price," even with the great advantage of having the Patent in possession and being able, by Woolwich, to ascertain the precise cost of producing the article; but if the Patentee holds the Patent in his own possession, it is almost impossible to say what is a fair and reasonable price, because we have not the cost of manufacture.

2300. (*Mr. Fairbairn.*) That is in the case where the Patentees themselves manufacture?—Yes. Of course, each Patentee has an extremely exalted view of his own invention. To confirm that, I may give one case, sent us under the terms of our present circular for dealing with inventors. Since 1859 we have never dealt with them without asking them beforehand to state what they consider to be the benefit of their invention, and what is a fair and reasonable sum to assess by way of compensation. This is the circular under which the department now acts with the view of avoiding as much as possible disputes with Patentees and inventors (*producing the same*). The following letter was addressed to the Secretary of State by a Patentee with reference to an instrument of war which was suggested as likely entirely to supersede the Armstrong gun, and at a time when the country was supposed to be in need of the best large-sized guns. The letter states, "Firstly. That the results intended to be attained by my invention are greater safety in using cannon of all sizes, cheapness in manufacturing them, facility of moving them in consequence of greater lightness of construction, and the possibility of making cannon so powerful as to render all iron or steel plating useless as protection to

ships of war. Secondly. That the estimated cost of the invention in a state to be introduced into the service is about 2,000*l.* for a cannon large enough to sink the 'Warrior' by three shots, and about 150*l.* for a cannon a little stronger, and better than the Armstrong 100-pounder. Thirdly. That the sum I require for the assignment of my Patent to the Secretary of State is 500,000*l.* or for a licence to manufacture, the sum of one shilling per hundred-weight of cannon made on my plan by Government officers in Royal arsenals or foundries."

I have with me a list of inventions which I may refer to for the same purpose; not one of these inventions has been accepted; they have been examined, and not one is worth anything; but I only quote them to show the price which each inventor puts upon an invention which turns out to be useless. One gentleman for the expanding or minie bullet, asks 500*l.* a year. Another, for an incendiary system of warfare, asks 50,000*l.* Another gentleman will sell his Patent for strengthening guns for 500,000*l.*; that case I have just quoted. Another gentleman asks 5,000*l.* for a projectile and a royalty of 9*d.* on each shot. Possibly there is nothing more deceptive than in a large department, like the War Department, assessing a royalty for its consumption; for in the case of minie bullets or many other things where a royalty is placed upon consumption it is found to be enormous. When we rewarded Mr. Pritchett for his minie bullet, in 1853, and endeavoured to take out anything like a scale, we found that the consumption of the article was so enormous that you could not reconcile what was ultimately given for it with any figures. Another gentleman asks 15,000*l.* for the invention of a projectile or 10,000*l.* for the licence. The next case that I have is a material for making the fittings for lumber boxes; 1,000*l.* is asked, or 1*s.* 6*d.* per piece for the article when used. Here is another invention for shells; 8,000*l.* is asked. The next is an invention for muzzle stoppers for cannons and rifles; 10,000*l.* is asked for the Patent. The next is a plan for suffocating troops in tents, for which 12,000*l.* is asked, and a note is put to the effect that it is too absurd for the Ordnance Select Committee even to investigate. The last which I have upon the list is an invention for water-proofing paper, for which 5,000*l.* is asked. There have been no pains taken in selecting these cases, and I merely quote these instances to show how extremely difficult it is to approach an inventor for the purchase of the Patent before using it. I could show the Commissioners by the returns of the War Office that we have paid larger sums for Patents which we have never used than for valuable inventions in constant use.

2301. (*Sir W. P. Wood.*) Have you been much inconvenienced by threatened litigation?—Certainly; and I am surprised that General Lefroy left another impression upon the Commissioners, because I will read from a report of his; I am sure that it was quite unintentional. At the time when the Armstrong manufacture was particularly introduced we were threatened with an injunction from Captain Blakely; the matter was referred to me, and I advised the Department to disregard the threat, but had we been stopped at that moment it might have been disastrous, and in the view of the Ministers of the day it would have been extremely prejudicial. I will read the instances which are cited in the Report of the Ordnance Select Committee. "The Ordnance Select Committee have been very frequently impeded in the prosecution of inquiries tending to the greater efficiency of Her Majesty's Forces by real or pretended legal right of Patentees. To quote recent examples, Messrs. Brown and Webb claimed the exclusive right to employ gunpowder in a compressed state. Mr. Lancaster claimed the exclusive right to fire rockets under water. The Whitworth Ordnance Company claimed the exclusive right to make projectiles with flat fronts. Mr. Ramscar claimed compensation for the supposed adoption by the Royal Carriage Department of means of checking the recoil

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" of guns by elastic springs or buffers. Mr. McKay, " who has patented a great variety of unusual forms of " shot, recently threatened the Committee with legal " consequences if any of them were tried without his " concurrence. Captain Blakely attempted to interfere " in the manufacture of Armstrong guns, as an in- " fringement of his Patent. Messrs. Church and " Goddard made a similar attempt on other grounds, " and speaking generally the Committee remark that it " may be asserted that it is scarcely possible to pro- " pose a new arrangement of breech-loading, or new " mode of rifling, or a new description of projectile " which shall avoid known defects and embrace " known excellences, without finding some of the " details anticipated by Patentees and claimed as " private property, although they are only component " parts of a system to which as a whole none of these " Patentees can lay claim." The Committee proceed to state,—“ The foregoing examples, which might " probably be extended by referring to records of " earlier date, will suffice to show that if Her " Majesty's Service is not seriously obstructed by the " facility with which Patents are at present granted " for warlike intentions, which the Crown alone can " for the most part make use of, it is not for want " of intention on the part of Patentees to enforce " their rights, but from other causes; the first of " which is the worthlessness of the great majority of " the so-called inventions patented; and the second, " the small proportion which really new discoveries " or appliances bear to those which are only supposed " to be new by ignorant or interested parties, but " on examination turn out not to be so. These con- " ditions are no security that serious inconvenience " may not some day accrue." Those are the instances which General Lefroy gives.

2302. (*Lord Overstone*.) With regard to those cases last alluded to as Patents obstructing the progress of a public department which turn out in the end not to be used, would it be possible to avoid the entering of those Patents upon the list of patented articles by a moderate degree of care in investigating the novelty of the invention before the Patent was granted?—I apprehend that every man takes his Patent at his own risk.

2303. Do you think that it would be practicable to introduce as a condition before granting a Patent, that there should be more stringency of examination with regard to want of novelty?—I am afraid that it would not be possible here, but the Prussian Government never grant a Patent without first satisfying themselves that the thing is an invention, and having made the grant, I believe that they always protect the Patentee from all consequences, and themselves engage in all the litigation.

2304. (*Mr. Grove*.) There are very few Patents in Prussia?—Very few. Then with regard to the extreme number of Patents (and I had intended to bring as an illustration Mr. Aston's work, in which they are all abridged), I think I may safely say that some hundreds of Patents have been granted for instruments and munitions of war alone since 1851, which are now in force, and although each of these might contain some slight element of use, it is in all probability only by a combination that any of the Patents could be used.

2305. (*Mr. Waddington*.) You were never stopped by injunction?—No; we have generally gone on and run the risk of what may happen.

2306. There has never been an application to the Court of Chancery for an injunction?—Never.

2307. (*Chairman*.) I understand you to agree with Mr. Carpmæl, that the Crown ought to have liberty to use patented inventions, itself fixing the amount of compensation?—I think so. In the first place I think that it is a favour conceded by the Crown to the Patentee, and that individual interest ought to give way to the public good as far as user goes. The other matter resolves itself into a question of remuneration. In the first place the Crown stands in a very different position from a

private manufacturer; a private manufacturer might not be very truthful as to whether he was or was not using the invention. No supply is made in the public department until Her Majesty seals the pattern; it is then entered upon the books, and every facility must at once be conceded to a man for knowing whether or not his Patent is used; and the exact quantity manufactured is returned to Parliament; the exact supply of every particular article is shown as easily as possible. Therefore if a Patent has been infringed, the owners can at once detect it, and to what extent.

2308. (*Mr. Waddington*.) In your opinion, is there the slightest analogy between the case of a private individual pirating an invention for his own interest, and the case of the Crown using it for the public interest?—I think not. We deal without any personal interest, assessing to each person, as fairly as we can, the amount of compensation to which he is entitled; not, perhaps, absolutely, but as compared with the sums paid to others. I can show the sums which have been paid to inventors for the last 20 years.

2309. (*Chairman*.) I understand that if all future Patents were limited by such a proviso as you propose, it might be done by the act of the Crown, without any legislation?—We have thought so ourselves, and we have proposed a proviso which would satisfy us. In fact, the paper which is now before me states our case better than I could state it in evidence.

2310. Do you hand in this paper as a memorandum stating the case of the War Department?—Yes.

The witness delivered in the same. See Paper A.

2311. (*Mr. Hindmarch*.) You have mentioned one case in which there was a reference to the Attorney General. Would it be an effective mode of providing for the remuneration that in case of difference the matter should be determined by some arbitrator to be appointed by the Attorney General or some public officer?—From my experience an arbitration is a greater evil than a suit taken as a principle. In the first place there are very few people dealing with public money, who deal with it with the same care and conscientiousness that they do in arbitrating upon the rights of private men. We have the greatest difficulty in adjusting claims so as to satisfy claimants, and if we ever appear hard towards other people, it is from the feeling that every man tries to get as much as he can out of the public purse, and it requires the greatest vigilance and care to arrive at a fair adjustment of what is due to him. I would also observe that there is this to be said, that these Patents are granted not only to our own subjects, but to aliens, and we are not unfrequently placed entirely in the hands of an alien for a supply. I can give instances in which the most valuable instruments and munitions of war have been invented by Americans, and therefore we have no security that the supply will be furnished to us. Whereas if a man declares his Patent, and we can use it, we can judge for ourselves whether the thing is advantageous or not.

2312. (*Mr. Waddington*.) You mean that aliens have taken out Patents in this country?—Yes, and there have been a great many of them, and they have been valuable Patents.

2313. (*Mr. Grove*.) So that a foreign government could make use of our Patent Laws to shut out the inventions from this country?—Yes.

2314. (*Lord Overstone*.) Supposing that a person in this country invented a gun which was vastly superior to any other gun in existence, and patented it in this country, and then refused to sell the use of that Patent to the Government of this country, but sold it freely and exclusively to some other Government, would that be practicable under the law?—I apprehend quite so.

2315. (*Chairman*.) Nothing but the interference of Parliament could prevent its being done?—No: it is entirely his own; he may do whatever he likes with it.

2316. In the extreme case which has been suggested

it would be necessary to have a special Act of Parliament?—Yes; but I could show the Commissioners that we have not unfrequently perfected men's inventions, and because they have not received the precise sum which they thought they were entitled to, they have sold their inventions to Foreign Governments. It once happened that a man's invention was perfected by the officers of the Department, and expense was incurred on behalf of the public, and he then insisted upon certain terms, and in the letter in which he insisted upon them he told us that if we did not give them he would go to the Emperor of the French and get them.

2317. (*Mr. Grove.*) And did he actually get them?—I do not know that he ever did.

2318. (*Mr. Hindmarch.*) Was one of the cases which you mentioned that of improvements in the preservation of vegetables?—No. Then there is a considerable difficulty in the present law with regard to the protection of the Crown from Patents. Of course, the Crown has in its employment a very valuable and skilful set of officers, and one of them who is present is experimenting upon gun cotton, but it is with him a matter of extreme embarrassment to know how to deal with the subject, if he discloses by way of Specification all that he knows, he sends the invention or discovery he has made away to the winds—the very night that it is put upon the file it goes to Paris, Dresden, Berlin, and elsewhere. If he does not do that he is afraid that some man will find out precisely what he has in view, and put a Patent on the file, and tax the Government in that way. So that we are upon the horns of a dilemma.

2319. (*Lord Overstone.*) What do you apprehend to be the remedy for that?—Of course if we had the power of using any invention at any time we could better grapple with a difficulty of that sort.

2320. (*Chairman.*) You would not then care to take out a Patent?—No, we never have done so. We have run the risk of it rather than do so.

2321. (*Mr. Waddington.*) That would raise your other objection?—Yes.

2322. (*Mr. Fairbairn.*) The War Department, I suppose, is subject to a good deal of annoyance in that way by claims of that description?—No doubt.

2323. Even when improvements are effected by officers of the Crown?—Yes; it is a very invidious question to be raised. It was more frequently raised a few years ago, when many of the officers at the arsenals and factories were members of the Ordnance Select Committee, because if they were found to be using the inventions of the persons who came before them as members of that Board, the allegation was made that the inventions had come to them as members of the Board.

2324. (*Mr. Grove.*) Has this case ever occurred, that you have been secretly practising something, and somebody else has patented it?—Yes, questions have often arisen of that kind as to priority of invention.

2325. If you practised it in secret that would not avoid Letters Patent?—No, it would not be a publication.

2326. In that case what would you do as regards giving a man compensation. He would be legally and morally entitled to some reward as having first given his invention to the public; would you give him the same compensation for his machine as if you had never practised it?—I think not. We have generally investigated the facts to elicit the truth. We have had a great deal of discussion at different times. In some cases it is very essential that the thing should be secretly used for a time, because although you can hardly exclude the outside world from all knowledge of the invention, yet sometimes the priority of a few months in times of war may be of the greatest possible moment. There is one other question to which I should like to refer, namely, as regards publicity, which may be considered to be a considerable disadvantage. At the present time the Patentee is obliged to state exactly what the inven-

tion is, and to define it so accurately that any workman is at any time able to make the article which is there stated.

2327. Does not the Act of the 22nd of Victoria, chapter 13, exempt you from that, inasmuch as the 3rd clause of that statute enacts that the Secretary of State for war may certify to the Commissioners of Patents that the invention should be kept secret?—I think not. That statute was framed when Sir William Armstrong's invention first came out, and I believe that the practice is still existing in the Patent Office that the Specifications are sent the same night as they are filed to all the foreign courts; the result was that when Sir William Armstrong patented his time-fuze in January, he sent it through the Patent Office to the Emperor of the French, and also to the Emperor of Austria, who both were at liberty to use it, but his own sovereign could not do so till the following April, when he assigned it to the Secretary of State. Considerable importance is attached by other nations to secrecy. Letters have come from the Foreign Office, stating that an invention communicated to the English Government is not to be disclosed under any possible circumstances; either the nature of the invention or from whom it came. The French law has been so altered since that Act was passed so as to enable the Government in France to suppress publication. Power is given to the Government to regulate by an Imperial decree the conditions of keeping inventions secret, and of "expropriation" for public purposes, and the mode of publications, Specifications, and registering transfers. The Act of the 22nd of Victoria was framed with the view of enabling the Secretary of State to suppress the publication of Specifications, but unfortunately it obliges him to acquire the Patents first, and he does not want to acquire half the Patents which are taken out; otherwise he has no means of preventing the publication of the Specification. Moreover there is no power of taking a Specification off the file, or suppressing it, and therefore the power which we now have is an extremely limited one. We must first take an assignment of the Patent, and that assignment must be taken before the Complete Specification is filed, and then if we are the owners of the Patent before the Complete Specification is filed, we can prevent the Provisional Specification being published, but then we are obliged to purchase it, and we have not sufficient experience, because it is useless to us unless we adopt it into the service, and it is never adopted into the service until it has been extensively practised.

2328. (*Mr. Hindmarch.*) Would you suggest that a longer time should be allowed for the Specification?—I think that the remedy would be to allow the Secretary of State at any time to obtain from the Patent Commissioners, with or without the assent of the Patentee, an order directing their own officer to keep the Specification secret.

2329. (*Mr. Grove.*) In that case how would you manage with regard to the compensation to the Patentee, that would be giving a more formidable power than what we have discussed already?—I do not think that the Patentee would be injured by it.

2330. Supposing that for 14 years you had an order that the Specification should be kept secret, that order might be continued during the whole continuance of the Patent?—Yes.

2331. (*Sir W. P. Wood.*) Then the Patentee could not grant licences?—Why not? It does not affect the validity of his Patent.

2332. (*Mr. Grove.*) He could not use it at all, he could not use the machine. To effect your purpose of secrecy it would entirely shut up the use of the Letters Patent?—You would do it with the assent of the Patentee. If the Patentee has anything to propose, our officers may say, "We think this a remarkably good thing, and though there has been a great deal of time occupied in investigation, the Patent may have still escaped attention, and under the circumstances, if the Crown adopts it, we think that the Specification should be taken off the file."

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2333. If the Patentee was satisfied with the compensation the difficulty would be cleared, but my difficulty is that if, as regards a great number of Patents for munitions of war, you had the absolute power of keeping them secret as long as you pleased, you might virtually shut the Patentee out of his Patent for its whole term?—This power is only to the Crown, or its own officer.

2334. Would it not come very much to this, that it would only apply where you had been instrumental in taking out the Patent, or to Patentees who had agreed with you?—I think so.

2335. That seems to be the object of this statute?—Certainly.

2336. (*Mr. Hindmarch.*) Under that statute are you at all protected against the following inconvenience,—supposing that a Patentee sells you his Patent, and that you get the Specification kept secret, have you any means of preventing his promulgating it?—None, beyond taking a bond in the payment of a certain sum.

2337. He might cross the channel?—Yes.

2338. He might be a foreigner?—Yes.

2339. (*Mr. Waddington.*) You cannot provide against that?—No. I have a case which arises under “The Registration of Designs Act,” but may be used as an illustration to show how these exclusive rights are worked against the Crown. Not very long ago Her Majesty thought it expedient to change the clothing of the 91st regiment of foot into the Highland costume. The Commander-in-Chief placed himself in communication with the officers, but no sooner did certain tradesmen know that Her Majesty had sealed the pattern than they registered it, and the following is the letter which came to us from the Horse Guards,—“Messrs. [] having registered the designs for the appointments and ornaments approved by the Queen for the officers

“of the 91st Highlanders, which were prepared for submission to Her Majesty by them, I am directed by the Field Marshal Commanding-in-Chief to request that you will move the Secretary of State for War to call upon the Solicitor to the War Office, to state how far such registration is rendered invalid by the fact of their being articles of military equipment, the manufacture of which cannot be monopolized by one house, to the exclusion of the trade generally.” The next letter shows the facts more particularly, but those facts are not varied. “In reply to the inquiry contained in your letter of the 20th ultimo, I am directed by the Field Marshal Commanding-in-Chief, to request that you will be pleased to inform the Secretary of State for War, that when the Queen permitted the 91st regiment to assume the designation and garb of a Highland corps, it became necessary to lay down and describe the appointments and ornaments to be worn by the officers, and Colonel Bertie Gordon commanding the regiment was accordingly requested to procure and submit for approval drawings of the same. These he obtained from Messrs. [], who, when the sketches had been approved, registered the designs, thus securing for themselves the sole right of manufacturing articles of equipment for the officers of the 91st Highlanders, and it is this registration which His Royal Highness desires to ascertain is or is not valid, other men in the trade having inquired whether they are at liberty to manufacture the articles sanctioned by the Sovereign, notwithstanding the registration alluded to.” Another firm holds a Patent for a head-dress for infantry, and if the pattern should be generally adopted into the service, the decision would in effect place the whole supply of chacos for the army exclusively in the hands of one firm.

F. A. Abel,
Esq., F.R.S.
—j

FREDERICK AUGUSTUS ABEL, Esq., F.R.S., examined.

2340. (*Lord Overstone.*) I believe that you are connected with the Chemical Department of the War Office?—I am the head of the Chemical Department.

2341. Has it come under your observation in that capacity that the proceedings of the War Office are seriously embarrassed or interrupted by the existence of Patents?—I do not remember any instance in connexion with the manufacturing departments where serious embarrassments have actually occurred in consequence of Patents existing which relate to materials of different kinds manufactured in those departments; and for this reason, that in the first instance such manufactures relating to Patents are necessarily experimental, and cannot therefore interfere, according to the present state of the laws, with the Patent rights of individuals. It is not until any particular article manufactured in a department at Woolwich or elsewhere has been approved of for use in the service, that the claims of the Patentee have come into consideration at all.

2342. (*Mr. Waddington.*) Do parties ever make claim against you for mere experiments?—Such cases have occasionally occurred, but they have been ignored because they could not have been legally carried out.

2343. (*Lord Overstone.*) But is it the fact that the heads of manufacturing and other departments connected with the War Office have found that the existence of Patents for implements and appliances for war has been a source of serious inconvenience to them?—I do not remember a single instance in which it has occurred.

2344. Is there any ground upon which you think that this Commission should take into consideration the expediency of altering any of the provisions of the Patent law, for the purpose of extending the necessary protection to the transactions of the War Office?—Certainly.

2345. In what respects do you think that the law should be altered and upon what grounds?—I think

that when articles actually adopted into the service are claimed by Patentees, that is to say, where they are really patented articles, embarrassment, not to the manufacturing department itself, but to the Government, may certainly arise in consequence of the unreasonable claims of Patentees, and it is for that reason that undoubtedly some better arrangement is required for the purpose of determining the true value of the particular patented article, or Patent, to the Government.

2346. You think that some new arrangement for determining the value of the patented article which the Government is using should be devised?—Yes.

2347. Can you guide this Commission in any way by suggesting what form that provision shall assume?—I agree to some extent with the evidence which has been given by the solicitor to the War Department, that the head of a manufacturing department is undoubtedly the authority most fitted to determine, and to fix the proper value of any particular patented article which is to be adopted into the service. At the same time I think that instances may occur in which the decision or recommendation of the head of such department may be objected to, and perhaps with some reason, by the Patentee. The head of a manufacturing department may be himself more or less an inventor; he naturally makes it his business to improve as much as possible the articles which he has to manufacture, and with which he has to deal, and consequently a Patentee may sometimes reasonably object to a recommendation made by such an officer as being biased or as not taking fully and fairly his claims into consideration.

2348. (*Mr. Hindmarch.*) Are you connected chiefly with the experimental department?—I am connected with the experimental department and the manufacturing departments.

2349. Have you much to do with the manufacturing departments?—I am only connected with them as a consulting authority.

2350. Advising them?—Yes.

2351. You have nothing to do with the management of the manufacturing departments?—I have not.

2352. (*Mr. Fairbairn.*) As I understand you, you have not been subjected to much inconvenience with regard to claimants in your department?—Not in my department; I speak generally, and I know that the heads of other departments in the arsenal would give the same evidence, that practically they are not inconvenienced in their actual work by the claims of Patentees, I mean that the embarrassment does not apply to the manufacturer himself, though it may arise at the War Office; he can carry out his experimental manufacture without any hindrance; any claims afterwards made become a question resting with the War Office solicitor and other authorities to whom they may be referred.

2353. In your experimental chemical researches you have not been much troubled with regard to claimants?—Not at present, but I think that it is possible for cases to arise in which one may be troubled; this difficulty may arise (and it has been pointed out already to some extent by the solicitor) that the head of a manufacturing or other department, who has to deal experimentally with things, is frequently, as I have before said, improving appliances or materials, the manufacture or application of which he superintends; now, if he has not the power either of keeping those improvements perfectly secret, or of securing them to himself by Patent, then the War Office authorities are placed in the position of having in all probability to pay private individuals for inventions or improvements actually made by their own officers.

2354. In your experimental inquiries, when you have happened to fall upon any discovery, you have not been much annoyed by claimants saying that they have had precedence of you?—Not at all, and it is to that that I referred in my first answer. We do not meet practically with those embarrassments during experiments, but we may meet with them in applying the details of improvements. For instance I am at present engaged upon the working out of the application of gun cotton, the whole details of which application were communicated as a great secret to this Government by the Austrian Government. Some time after I commenced these experiments, while they remained a perfect secret and while every care was taken by this Government to keep them secret, a Patent was taken out in this country for the whole improved process of the manufacture.

2355. You are still pursuing those researches?—Those researches are being pursued, and improvements are being worked out, but in all probability all those improvements might be claimed under an existing Patent, which is a comprehensive one, and unless such improvements can be secured to the Government in some way, we should become embarrassed, in the event of applying them, by the claims of Patentees.

2356. (*Mr. Grove.*) Could a Patentee claim anything which was invented subsequently to his Patent, without fraud, he might declare that he had himself invented it first?—Not an actual invention, but you know how frequently improvements are claimed under the original Patent.

2357. (*Sir W. P. Wood.*) I understand you to say that as regards your own processes, and your own inventions, you go on inventing or carrying on your manufactures just as if no Patents existed, without troubling your mind upon the subject?—Exactly so.

2358. But when the Government wish to use your inventions they may be impeded by the claims in question?—Yes; then comes the question as to the claim, and that is a question entirely apart from the manufacture. As manufacturers we are not practically embarrassed by the question.

2359. (*Mr. Grove.*) Has any suggestion occurred to you with reference to the mode of remunerating Patentees, supposing a clause to be put into the Letters Patent, enabling the Government department to use

their inventions in addition to the present clause. The difficulty which has hitherto occurred upon the subject is that in one case an arbitration would be a very costly and tiresome and impracticable proceeding, and in the other there is the difficulty of letting the buyer assess the sum at which he shall purchase the invention. Has any mode occurred to you by which a reasonable sum could be put upon the invention, and assured to the Patentee?—I think that in many instances it would become necessary to have some other official referee in addition to the head of the manufacturing department, to determine the value of the invention, for the reason which I have stated,—that the inventor may say, and possibly with justice, that the manufacturer is biassed, that he does not appreciate the full value of his invention, because he himself has some very similar invention, and that therefore although it may be adopted for the service, that manufacturer will not be inclined to give him the full value which he may claim for it. That objection has been raised, I speak generally—I came here very unexpectedly, and I am not able to quote an instance, but I know that that objection has been raised, and that the question of bias is constantly thrown into the teeth of the heads at Woolwich.

2360. (*Mr. Fairbairn.*) Then it is your opinion that a referee would be necessary?—Yes; I think that the head of the department is the man to advise, but I do not think that it would be a satisfactory arrangement to the Patentee to give the head of the department the sole power to determine the value to be set upon the invention.

2361. (*Mr. Waddington.*) It has been suggested that there should be an appeal from the department which has used the invention, to the Lords of the Treasury, would that meet your view?—I am not prepared to say whether that particular form of reference would be the best.

2362. (*Lord Overstone.*) Am I to understand you distinctly that the same power which is vested in the head of the department to determine the price that he is to pay for a patented article which he has used, would not be a satisfactory arrangement with regard to patented inventions which he has used?—I think that in very many cases it would be so, but that cases may occur in which it might not be so.

2363. Do you think that the probability of the occurrence of such cases is so great, as to make the principle which has been found applicable hitherto to the remuneration for articles consumed, inapplicable to the remuneration for inventions used?—I think not, but I think that it would still be necessary, in any new arrangement to have some means of settling dissatisfaction, which would be sure to arise occasionally, and I believe in some instances with justice.

2364. Do you think that that dissatisfaction could be sufficiently met by making some other officer of the Government, unconnected with the particular department, a referee, or do you think that it is necessary to seek a tribunal entirely beyond the bounds of the Government?—I think that it would not be necessary to have a special tribunal, but that it would not be at all difficult to select a competent officer, and one of good judgment, who would determine impartially whether the proposal of the head of the department were a just one.

2365. The question had not reference to the creation of a new tribunal for the purpose, but whether in seeking a referee it was necessary to go beyond all the officers of the Government, or whether a referee could be satisfactorily found in some other officer of the Government but not connected with the particular department, say for instance, the Chancellor of the Exchequer, or the Lords of the Treasury, or the law officers of the Crown?—I think that a referee certainly could be selected from the Government.

2366. And you think that a selection made from other officers of the Government not connected with the particular department would be sufficient to allay the dissatisfaction which you otherwise apprehend?—Yes.

*F. A. Abel,
Esq., F.R.S.*

24 June 1864.

F. A. Abel,
Esq., F.R.S.
24 June 1864.

2367. (*Mr. Grove.*) You were asked with regard to the analogy between the case of selling articles to the Government, and the Government using the Patentee's invention. Is there not this difference, that whereas in selling articles the Government buy an article, and therefore must pay for it, and would probably pay a reasonable price, the assessing the value of an invention would be much more difficult because they must take into consideration all the bearings of the invention, they themselves also being inventors?—There certainly would be that difference between the two cases, and that would make it a more difficult question to deal with than that with reference to the purchase of articles.

2368. (*Lord Overstone.*) Is there anything further which you think it important to submit to the Commission?—There is only the question of inventions made by Government officers themselves. This appears to me to be a question which might not come within the pale of any general arrangement made with regard to private Patentees, and it may be a somewhat difficult question to know how inventions of that description should be dealt with. It is necessary on the one hand that the Government should be protected from the piracy (if I may use the term), of such inventions as had been worked out by Government officers; at present the only method of doing that is by securing to the officer himself a Patent right for that particular invention or improvement. On the other hand it is also not only advisable but just, that the officer himself should be protected against the public in the case of an invention to which he has given great time and thought.

2369. (*Mr. Fairbairn.*) The same as any other Patentee?—The same as any other Patentee.

2370. (*Lord Overstone.*) Then am I to understand you that the points to be met are these: First of all, the danger of an officer of the Government taking out a Patent for an invention, the idea of which he has derived in the course of his service under the Government in his department, and on the other hand the danger of an officer being deprived of a legitimate Patent by the invention transpiring to the public before he has protected himself?—The second is the point I refer to, and the evil arising out of it may be two-fold, not only that of the officer losing any benefit which he should justly derive, but of the Government having to come to some arrangement with private individuals who have really no right to the particular invention.

2371. (*Mr. Fairbairn.*) With reference to any discovery or invention made by any officer of the Government, and brought into use as soon as it is made public, no other person can take out a Patent for anything of that sort so as to deprive that officer of the merit and the use of his invention?—Not if it is made public, but there is the difficulty.

2372. (*Mr. Hindmarch.*) Do you propose that in cases of this sort, namely, of an invention made by a Government officer, the Government should have the right to use the invention free, and that the inventor should have a Patent as against all the members of the public?—Exactly so, that as regards the public he should stand as a private individual, but that in reference to the Government, as he is their servant, and has been engaged in their employment in working out the subject, the Government should have

the free and uncontrolled use of it without any conditions.

2373. (*Mr. Waddington.*) Would there be any difficulty in effecting that object by a Patent granted to a person in the service of the Government?—I apprehend not.

2374. (*Mr. Fairbairn.*) If I understand you correctly, any invention or discovery made by officers of the Government should not be patented by the public?—Exactly.

2375. They should not have any advantage from it because they have not contributed either to the discovery or to the invention?—Quite so. The thing is very simply understood by an illustration. An officer makes an improvement in fuzes; unless he patents it he may be deprived of the benefit which it would be to him as a private individual, because a manufacturer may, in this country for private purposes, or for foreign countries, make this improved fuze, and there would be no possible redress for the inventor or the improver. On the other hand, if the invention is not secured to the Government either by strict secrecy, which is impossible, or by a Patent right, a very slight alteration of the improvement may take it entirely out of the hands of the Government and place it entirely in the hands of a private Patentee.

2376. (*Mr. Hindmarch.*) Suppose this case, which I believe is not at all unfrequent, namely, that a man of skill employed in a Government manufactory devises some improvement, do you not consider that it would be in truth the property of the Government?—That may be so, but, supposing he were working in a private factory, his employers would object very strongly to giving it to any other individuals or firms.

2377. Suppose that in a case of that sort it was desired by the Government to keep the matter secret,—the officer has devised it in pursuance of his employment, and has been paid for doing it,—would you give him something beyond his salary, for instance?—That is a question which I am not prepared to discuss. I think that in the abstract he would not be entitled to it, if the devising of improvements were a part of his duty. But I was speaking of his relation to the public.

2378. I ask you that question because, if he would not be entitled to a remuneration in that case, I do not see how he could be entitled to it in any other?—I think that a public officer appointed to do certain work, but making a valuable discovery, quite apart in many instances, or to some extent apart from his work, would certainly have a claim, not only upon the Government but upon the public if they used his invention, and I think that although, as a Government officer, his services are at the disposal of the public so far, yet certainly no invention which is the product of a special exertion which he has made is of necessity the property of the public.

(*Mr. Carpmel.*) May I be allowed to say that Mr. Abel has misunderstood me when I spoke of heads of departments; he has confounded that with managers of departments. Mr. Abel is in that position the same as a private manager would be in a private manufactory. I mean the heads of departments, and not those gentlemen who are the manufacturing managers of the departments. I mean the Secretary of State, or whoever it may be.

The witnesses withdrew.

Adjourned.

APPENDICES

TO THE

REPORT OF THE COMMISSIONERS APPOINTED TO INQUIRE INTO THE WORKING OF THE LAW RELATING TO LETTERS PATENT FOR INVENTIONS.

APPENDIX No. I.

APPENDICES to the EVIDENCE of MR. WOODCROFT, MR. EDMUNDS, MR. GROVE, MR. CLODE, and
MR. WEBSTER.

(1.)—APPENDIX to the EVIDENCE of MR. WOODCROFT.

LIST.

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| <p>A. Official Practice under the Old Law.</p> <p>B. The Commissioners of Patents' Publications.</p> <p>C. Extract from the 9th Annual Report of the Royal Museum and Library, Salford; also a Table furnished by the Librarian, showing the number of References made to the Commissioners' Publications in the years 1854-7.</p> | <p>D. Table extracted from the 8th Annual Report (for 1860) on the working of the Free Library, Camp Field, Manchester.</p> <p>E. Tables furnished at the request of Vice-Chancellor Wood.</p> <p>F. Results of the Examination of the first hundred Inventions for which applications for Patents were made in each of the years 1855, 1858, and 1862.</p> <p>G. Prussian Patents.</p> |
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A.	
OFFICIAL PRACTICE UNDER THE OLD LAW.	
<i>Stages to be passed and Fees and Stamps payable in obtaining Letters Patent for England alone.</i>	
	£ s. d.
Petition, with Declaration at Chancery Affidavit Office -	0 1 6
At the Home Office:—	
Reference of Petition to Attorney or Solicitor General -	2 2 6
Queen's Warrant to ditto to prepare Bill (An extra fee of 1l. 7s. 6d. was charged for every additional name after first, and an extra fee of 1l. 7s. 6d. if the Patent extended to the Channel Islands and Colonies, or either of them.) -	7 13 6
Queen's Bill -	7 13 6
(The same extra fees were chargeable as in the Queen's Warrant.)	
At the Attorney or Solicitor General's Chambers:—	
Report -	4 4 0
At the Patent Bill Office:—	
To Attorney and Solicitor General on the Queen's Bill (one moiety each) -	5 0 0
The Clerk of the Patents on ditto -	2 7 6
The Clerk of the Patents for transcripts for Signet and Ring Seal Offices -	1 7 6
Ingrossing Clerk -	1 1 0
Stamp -	6 0 0
At the Signet Office:—	
Signing, sealing, and passing a Bill -	4 7 0
(If the Patent was for more than one person, an extra fee of 5l. 18s. 6d. was chargeable for each additional name, and an extra fee of 13s. 6d. if it extended to the Channel Islands and Colonies or any of them.)	
At the Privy Seal Office:—	
Signing, sealing, and passing a Bill -	4 2 0
(Same extra fees were chargeable as at Signet Office.)	
At the Great Seal Patent Office:—	
Preparing the several documents, engrossing and enrolling Patent, Stamps and box -	48 7 7
(An extra fee of 2l. 13s. 4d. for each additional name.)	

Total for England alone -	94 7 6
The cost of a Patent for Ireland was -	116 17 7
And that for Scotland -	63 3 7
Total -	<u>£274 8 8</u>

To this sum may be added the Costs of Opposition, if any, and the fees payable on the Enrolment of the Specification.

The average cost of a Patent for the three kingdoms under the old law was estimated by Mr. Hindmarch at 400l. The average cost of a Patent for England alone was not less than 300l.

The following were the distinguishing points of Official Practice under the old law:—

1. A separate Patent for England, Scotland, and Ireland.
2. An extension of the English Patent to the Channel Islands or the Colonies on payment of an extra fee.
3. Payment of extra fees for every additional name in Patent after the first.
4. The Patent was granted on the Report of the Law Officer on the Title and Particulars of Invention left at his Office, and termed the "Deposit Paper."
5. The date of the Patent was the day of sealing, usually (except in opposed cases) about a month from the date of the application.
6. The Patent was granted without any notice being given, except to persons who had entered Caveats at the offices of the Attorney and Solicitor General.
7. Titles of Patents were not restricted to one invention.
8. In no case could a Specification be enrolled before the sealing of the Patent.
9. In entering Oppositions, the fee only, without any statement of particulars in writing, was required.
10. Specifications were enrolled in three different offices.

As the changes in practice in all these respects introduced by the Act of 1852 will be set forth in the subjoined summary, it will only be necessary to advert here to the last item as having special reference to the duties of the Specification Department of the Commissioners' Office.

The fees for searches paid at the three Enrolment Offices were:—

In the Petty Bag -	3 6
" Enrolment Office -	1 0
" Rolls Chapel -	1 0
	<u>5 6</u>

As it was generally advisable to extend a search to the three offices, and for every search in each of the offices a separate fee was demanded, these expenses, coupled with the want of indexes, deterred most men from prosecuting any inquiry as to the priority of their inventions. Where,

however, the apparent importance of a discovery afforded sufficient inducement for such an inquiry, weeks were often occupied in the task, and from 2*l*. to 3*l*. have been paid by a single inventor in one day for searches at the Petty Bag Office alone.*

Much of the delay and expense was due to the want of sufficient indexes. In 1851 a witness† before the select committee on the Patent Laws, thus stated his own experience:—

“There is one great evil I found to exist, namely, that the specifications are enrolled in three different offices; the Rolls Chapel, the Enrolment Office, and the Petty Bag Office, and at none of them had they a complete index of all the enrolled Specifications of Patents; so that, when an inquirer asks for a certain Specification, they will look in their index which contains the Specifications only which have been enrolled there; and if they have not the Specification asked for, they tell him, ‘We have no such enrolled Specification, you must go elsewhere;’ then they say, ‘But you must nevertheless pay your fee for the search; that is necessary;’ then he goes to the next office; if they have it not there the fee for the search is again demanded. He then goes to the third office, and it may not be even there, as the Specification may not have been enrolled. So that the inquirer not only loses his time in running to all the three offices, but he is compelled to pay three separate fees.”

To add to this evil at neither the Enrolment Office nor the Petty Bag Office were persons allowed to make copies or even a single extract in writing.

In the short space of five years the whole of the 13,561 Specifications thus divided amongst three offices of enrolment have been copied, printed, and placed not only in the free library in the Commissioners’ Office but in upwards of 150 free and official libraries throughout the United Kingdom and its colonies. And this great work of printing the old series of Specifications has been accomplished without interfering with the daily publication of the Specifications filed under the Act of 1852.

The total number of Specifications under both old and new law thus printed, arranged, and made daily accessible to the public, is 43,458, forming 1,711 volumes of imperial 8vo. including the lithographed Specification drawings.

Of the total weekly number of visitors to the Commissioners’ Library, upwards of 200 are searchers for previous patents.

Under the old system with three offices of record, the searches thus made, if confined to a single invention, would have cost the applicants, in fees, upwards of 1,000*l*. weekly, or 52,000*l*. per annum; but as the facilities afforded by the Commissioners’ Library encourage the utmost amount of research, it is no uncommon thing for an inventor or his agent to make some scores of searches in the course of one day, the cost of which under the old system would have reached a startling amount.

From the increasing industry exhibited by inventors in prosecuting searches for prior Patents, it may be inferred that the present system has not yet had a fair trial, and that if there were ever any grounds for apprehension as to the multiplication of Patents by the mere revival of old inventions that cause of alarm is daily diminishing by the readiness with which inventors are availing themselves of the facilities afforded by the Patent Office for undertaking their own preliminary examinations.

Previous to the war, the staff of the United States Patent Office cost that country upwards of 24,000*l*. sterling against the sum of 6,500*l*. paid to the officers and clerks in the English Patent Office. This large amount was due chiefly to the system of preliminary examination, a system which Judge Mason, one of the ablest Patent Commissioners of the United States, thus adverts to in his report to Congress in 1856.

“The multiplicity of business of the office renders it wholly impossible for the Commissioner to exercise a personal supervision over the decision in each of the numberless cases presented for official action. When the examiner reports in favour of granting a Patent, it is issued without further question or examination. Under such circumstances the importance of correctness and uniformity of decision upon the first examination can hardly be too highly appreciated. This cannot be reasonably be hoped for under the system now in operation, and the more that system is extended the greater the evil becomes.

“All our republican notions of propriety revolt at the idea of making the substantial rights of property of any citizen depend upon the mere discretion of an executive officer. Such a system seems rather Asiatic than Anglo-Saxon in its type and character. * * * When an application, which should be patented, is rejected by this office, no opportunity is allowed the applicant for showing the justice of his claims before a court or jury. If he has a natural right to what he has created, may he not in such circumstances be regarded as having been ‘deprived of his property without due process of law,’ and without the intervention of that great constitutional bulwark which he regards as a birthright—a fair trial before a regular judicial tribunal?”

In his address to the English Commissioners of Patents the same learned judge and commissioner remarks, on the subject of printing and publishing specifications,—

“The admirable example you have set in publishing the specifications and drawings in full, and putting them on sale at moderate price, so that all can easily provide themselves with what they need for private use, will ere long, I trust, stimulate our own Government to do the like.

“Nothing short of this in the way of publication can give permanent satisfaction.”

One British colony and two foreign states have already followed the example of England in printing and publishing the specifications and drawings in full.

In Canada the first volume was issued in 1860, under the title of Patents of Canada, from 1824 to 1849, Toronto, 1860, in royal 8vo., with woodcut drawings. Copy exhibited.

The United States of America. [Each specification separately published as in England, with photographs of machines and models. 4to.] (Copy exhibited.)

Kingdom of Italy:—Descrizione delle Macchine e Procedimenti per cui vennero accordati attestati di Privativa, in conformità delle Leggi, 12 marzo, 1855, e 30 Ottobre, 1859, pubblicate d’ordine del Signor Ministro delle Finanze. Torino, 1855–62, 4to., with atlas in folio. (Copy exhibited.)

In Austria there was formerly an official publication of the descriptions and drawings of Patented Inventions, but this work was discontinued in 1847. It was entitled Beschreibung der Erfindungen und Verbesserungen für welche in den Kaiserlich-Königlichen österreichischen Staaten Patent ertheilt wurden, und deren Privilegiums-Dauer nun erloschen ist. Herausgegeben aus Anordnung der Kaiserlich-Königlichen allgemeinen Hofkammer. Wien, 1841–7, 6 vols., 4to., with copper-plate illustrations.

In France, since 1811, a selection of specifications has been published, now extending to 134 quarto volumes, and about 20 vols. of catalogues in 8vo.; but the fact of this being merely an eclectic work, and the absence of any intelligible system of numeration or a general index, renders its use limited and difficult. The following is the title of this work:—Description des Machines et Procédés pour lesquels des Brevets d’Invention ont été pris, &c., &c., &c. Publiée par les Ordres de M. le Ministre de l’Agriculture, du Commerce et des Travaux Publics. Paris, 1811–62, 134 vols. 4to., and 20 vols. 8vo., with drawings in copper-plate.

The following is an extract bearing on the same subject from the last Annual Report of the Commissioner of Patents for the United States of America:—

“United States Patent Office,
“January 31, 1862.

* * * * *

“In making provision for this great public want Congress should not be unmindful of the examples of other nations most advanced in the mechanical arts. In Great Britain, France, Sardinia, and Belgium, the specifications are published in full, and in such a form that printed copies may be furnished to all who may apply for them at cost price, while the entire publications are extensively distributed for the free use of the public. In Prussia, Saxony, and Bavaria, official journals are published containing full abstracts and lists of the specifications of Patents. The publications of specifications made by the French government consist of 91 volumes, quarto, of the old law, and 35 volumes, quarto, of the law of 1844. All which have been presented to the library of this office.

“In Great Britain the publication of the specifications and drawings of patents has been made upon a scale of magnificence which entitles it to be regarded as one of her great national works. The Great Seal Patent Office has published the complete specifications and drawings of Patents granted by that office since 1623, in two series, the

* See Mr. Woodcroft’s Evidence, 1849.

† See Mr. Woodcroft’s Evidence, 1851.

old law series from 1623 to 1852, and the new series from October 1852 to the present time. The old law series, comprising 12,977 patents in number, are contained in about 900 volumes, 450 folio volumes of drawings, and the like number of imperial octavo volumes of letter-press. The indices form seven imperial octavo volumes. The cost of these works in 1859 amounted to 92,000*l*. The expense of printing for 1859 was estimated by the Commissioner of Patents at 17,500*l*.

"The publications of the Great Seal Office consist of the specifications and drawings of Patents granted (the drawings are not photographic), a subject-matter index of Patents, an alphabetical index of Patentees, a chronological index of Patents, Commissioners of Patents' Journals (published semi-weekly), assignments of specifications of various classes of Patents, of which 20 volumes have been published, and all are in course of publication.

"The publications are distributed among 107 libraries and offices in Great Britain, 26 libraries in the British Colonies, and 22 in foreign countries. Of these last, six are in the United States; the cost of which has been upwards of 10,000*l*. The cost of the continuation is at least 1,500*l*. weekly. For these costly works our government has been able to make no return except the meagre abstracts heretofore published by us."

In 1858, after the Commissioners' publications had been placed in the great public libraries of Paris, they excited much attention, and the Société d'Encouragement pour l'Industrie Nationale addressed to the French Government a recommendation to follow the example thus set by the Commissioners of Patents in printing the specifications in full, each in a separate form, and with drawings in lithograph. The Société at the same time circulated a specimen number in close imitation of the English form, a copy of which is now produced. (Copy exhibited.)

In no other states are the specifications published in a separate form; but extracts and drawings are given in various official and scientific journals.

After the publication of the specifications and indexes had been fairly commenced the Superintendent of Specifications, with the sanction of the Commissioners, entered into correspondence with the Government of every country in which Patents for invention, or corresponding privileges, were granted; and during the vacation of 1856 visited in person most of the Patent offices on the continent, with a view to effecting an interchange of official publications, and so ascertain the opinions of official persons abroad on the subject of an International Patent Law, at that time under discussion.

The results were highly satisfactory, and led in most cases to an uninterrupted interchange of official publications and documents of the utmost importance to persons interested in the Patent system at home and abroad.

The laws, decrees, or ordinances, together with the rules and regulations relating to privilege for inventions in operation in foreign states and in British colonies have been published from time to time in the "Commissioners' Journal," and from the most authentic and extensive collection of Patent Laws in existence. The following advertisement from the "Commissioners' Journal" will serve as an index to the numbers now produced. (Copies exhibited.)

FOREIGN and COLONIAL PATENT LAWS and RULES, being translations or copies of Official Communications, may be found in the following Numbers of this Journal, published at 2*d*. each, or 3*d*. free by post:—

Austria, No. 291.	New South Wales, No. 386.
Baden, and Petty States of Germany, No. 325.	New Zealand, 861.
Bavaria, No. 262.	Norway, No. 665.
Belgium, Nos. 292 and 348.	Parma, Piacenza, and Guastalla, No. 321.
British Guiana, No. 798.	Poland, No. 335.
Canada, Nos. 279, 625, and 856.	Portugal, No. 325.
Cape of Good Hope, No. 727.	Prussia, Nos. 313 and 329.
Ceylon, No. 648.	Queensland, No. 859.
Cuba, No. 498.	Roman States, No. 319.
Dutch West Indies, No. 322.	Russia, Nos. 334 and 508.
France, No. 228.	Sardinia, Nos. 233, 235, 636, 637, 639, and 640.
Germany, No. 435.	Saxony, No. 236.
Greece, No. 325.	Sicilies (the Two), No. 316.
Hanover, No. 231.	Spain, No. 323.
India, Nos. 240, 348, 552, and 578.	Sweden, Nos. 327 and 354.
Jamaica, No. 660.	Tasmania, No. 860.
Lucca, No. 321.	Trinidad, 883.
Mexico, No. 496.	United States of America, Nos. 638, 646, 753, and 789.
Netherlands, No. 289.	Victoria, Nos. 186 and 359.
Newfoundland, No. 858.	Wurtemberg, No. 314.

To show the general interest taken in the subject of protection for inventions and the great efforts made throughout the country previous to 1852, to obtain legislative enactment on the subject, a list is here submitted of bills introduced into Parliament and of the leading societies and committees formed in various parts of the kingdom for that object.

Bills brought into the House of Commons between 1832 and 1852.

A Bill to explain and amend the laws respecting Letters Patent for Inventions. Feb. 1833.

A Bill to amend the laws respecting Letters Patent for Inventions, and to secure the property therein to Inventors. July 1833.

A Bill to further amend the laws respecting Letters Patent for Inventions, and to settle the practice and lessen the expense of obtaining the same. July 1833.

A Bill to amend the laws touching Letters Patent for Inventions. 1835.

A Bill to amend the law relating to Letters Patent for Inventions, and for the better encouragement of the arts and manufactures. June 1836.

A Bill to amend the practice relating to Letters Patent for Inventions, and for the better encouragement of the arts and manufactures. 1837.

A Bill to amend 5 & 6 Will. IV. intituled An Act to amend the Law touching Letters Patent for Inventions. 1839.

List of the leading Societies and Committees for the Promotion of Patent Law Reform in 1851.

Committee of the Society of Arts for legislative recognition of the rights of Inventors. 1850.

Art Protection Society for the amendment of the laws affecting Letters Patent, &c. 1850.

Manchester Patent Law Reform Association. 1848.

National Patent Law Amendment Association. 1851.

United Inventors Association for the amendment of the laws affecting Inventions. 1851.

Association of Patentees and Proprietors of Patents for the protection and regulation of Patent property. 1851.

Society for promoting scientific inquiries with social questions. Reform on Patent Laws. 1851.

Patent Law League. 1851.

Birmingham Patent Law Reform Association. 1850.

It is well known that all these societies agreed as to the more important reforms to be effected, and that the changes they suggested were substantially carried out by the Act of 1852.

As a proof of the general satisfaction given by the working of the new law it may be remarked that not one of these societies is known to survive to take part in the present agitation, and that, with the exception of the very important question of the trial of Patent causes,—a question more of a judicial than a ministerial character.

B.

THE COMMISSIONERS' OF PATENTS' PUBLICATIONS.

Letters Patent for inventions were granted under the Act 21 James I., c. 3, until the 1st October 1852, when the "Patent Law Amendment Act, 1852," 15 & 16 Vict., c. 83, came into operation; and under this Act (together with the supplementary Acts 16 Vict., c. 5, and 16 & 17 Vict., c. 115,) Letters Patent for the United Kingdom have since been granted.

One of the conditions of the grant under the old Patent Law required the Patentee, within a limited time, to enrol a description or Specification of his invention in the High Court of Chancery. There was no provision for the printing of Specifications; and when a copy was required for legal or other purposes, only a manuscript copy could be obtained, and that at great expense.

The Patent Law Amendment Act authorized the Commissioners of Patents to print Specifications, Indexes, Disclaimers, and Memoranda of Alterations, and to sell the same. Accordingly, in May 1863, the work of printing the Specifications was begun.

On the 13th September 1853, an advertisement appeared in the "Times" newspaper to the effect that some hundreds of Specifications were in the press and would be published as

soon as the prices could be fixed. Shortly after this, the Queen's printers commenced the sale of printed Specifications at their printing office, and continued to sell them until the end of 1854.

From the 1st January 1855, the printed Specifications and other publications of the Commissioners of Patents have been sold at the Great Seal Patent Office.

By means of the printed Specifications, persons requiring office copies for evidence in courts of justice are enabled to obtain them at a cost which may be termed insignificant, when compared with the charges for manuscript copies under the old system, for the printed Specifications are sold at the cost price of the printing and paper, and the charge for certifying and sealing the office copy is but 1s. The only additional expense incurred is in cases where there are coloured drawings; and then the charge of the draughtsman for colouring the lithographic copies of the drawings must be paid.

As an average example, the accompanying certified printed copy of C. W. Siemens' Specification, No. 2,366, 8th November 1854, may be referred to. The cost of this certified copy (with one coloured sheet of drawing) is 8s. 8d. The items are as follows:

	s.	d.
Price of printed Specification	0	11
Charge for colouring drawing	6	9
Certificate stamp	1	0
	8	8

The expense of a *manuscript* official copy under the old system would be 7l. 6s.; the items being:

	£	s.	d.
Writing copy of Specification	-	3	0
Stamps and paper for ditto	-	0	14
Making and colouring drawing	-	3	10
Stamp for ditto	-	0	2
	7	6	0

By the printed copy, therefore, a saving of 6l. 17s. 4d. out of 7l. 6s. is effected, with the further advantage of great economy of time; for the certified printed copy could be had in a day, but the preparation of the *manuscript* official copy would occupy not less than a fortnight.

The accompanying certified printed copy of T. W. Gray's Specification, No. 1,090, 15th April 1862, is an example of the cheapest official copy that can be had. The price of the printed Specification (which has no drawing) is 4d. and the certificate stamp 1s., so that the whole cost of the copy is only 1s. 4d. This certified copy could be obtained with only two or three hours' notice, whereas the time required for a *manuscript* official copy under the old system would be more than two or three days, and the cost 1l. 14s. 10d., the charge for writing the copy of Specification being 1l. 4s., and the stamps and paper 10s. 10d.

The printed copy of T. Dunn's Specification, No. 751, 18th March 1862, also sent herewith, proves in a striking manner the advantage of printing Specifications. The price of this copy, with the enormous number of 104 drawings, is 2l. 13s. As all the drawings are uncoloured, a certified copy for evidence would only cost one shilling additional; and the time required for examination and comparison with the original Specification and drawings would not exceed two days. Now a *manuscript* official copy under the old system could not be procured (on account of the great number of drawings) in less than six months; and the cost would be 282l. 3s. 2d., as thus set forth:—

	£	s.	d.
Writing copy of Specification	-	8	8
Stamps and paper for ditto	-	3	7
Making drawings	-	260	0
Stamps for ditto	-	10	8
	£282	3	2

The printed Specifications are not only valuable as the means of supplying certified or official copies for evidence at a small cost and with great expedition, but they also enable the inventor, scientific men, or operative, at a very low price, to possess copies of the Specifications of any inventions in which he may be interested.

Copies of Specifications and other publications of the Commissioners of Patents are forwarded by post from the Great Seal Patent Office, on the receipt of the amount of price and postage; and of this privilege great numbers of persons avail themselves, each day's post bringing numerous

letters containing orders for Specifications, &c.,* and postage stamps or Post Office orders to pay for the same. In fact, so great has been the demand for some Specifications, that second editions, of 250 copies each, have in many cases been required, and even a third edition has been necessary, as in the case of W. H. Perkin's Specification, No. 1984, 26th August 1856, sent herewith.

Moreover, the printed copies of the different Specifications, when arranged in their proper numerical order (and accompanied by the indexes of Patents), are of great importance for reference by persons who are desirous of determining the novelty of an invention, or who wish to examine all the Specifications relating to a particular subject. In order, therefore, to diffuse the information contained in the Specifications as widely as possible, the Commissioners of Patents have presented complete sets of their works to the following places in the United Kingdom, on condition that they shall be rendered daily accessible to the public for reference or for copying, free of all charge:—

Aberdeen (*Public Library, Town House*).
Accrington (*Mechanics' Institution, Bank Street*).
Belfast (*Queen's College*).
Beverley (*Guildhall*).
Birmingham (*Birmingham and Midland Institute, Cannon Street*).
Bolton-le-Moors (*Public Library, Exchange Buildings*).
Blackburn (*Town Hall*).
Bradford, Yorkshire (*Borough Accountant's Office, Corporation Buildings, Swain Street*).
Brighton (*Town Hall*).
Bristol (*City Library King Street*).
Burnley (*Office of the Burnley Improvement Commissioners*).
Bury.
Cambridge (*Free Library, Jesus Lane*).
Canterbury (*Municipal Museum, Guildhall Street*).
Carlisle (*Public Free Library, Police Office*).
Chester (*Town Hall, Northgate Street*).
Cork (*Royal Cork Institution, Nelson Place*).
Crewe (*Railway Station*).
Darlington (*Mechanics' Institute, Skinnerngate*).
Dorchester.
Drogheda.
Dublin (*Royal Dublin Society, Kildare Street*).
Dundalk (*Free Library*).
Falmouth (*Public Library, Church Street*).
Gateshead (*Mechanics' Institute*).
Gorton (*Railway Station*).
Glasgow (*Stirling's Library, Miller Street*).
Grimsby, Great (*Mechanics' Institution, Victoria Street*).

* As an example, the orders by post received on Tuesday, December 2, 1862, are here given:—

Messrs. Cocker, Brothers	Sheffield	-	Specification	1,085	(1862)
Mr. T. Whittaker	Nottingham	-	Specifications	2,874	(1857)
"	"	"	"	661	(1858)
"	"	"	"	120	(1860)
Mr. W. Fiskin	Newcastle-on-Tyne	-	Specification	1,690	(1861)
"	"	"	"	1,221	(1862)
Messrs. Leonard and Lindley	Nottingham	-	Specification	957	(1862)
Mr. W. Tasker	Halifax	-	Specification	1,783	(1857)
Messrs. Thomas Rowatt & Son	Edinburgh	-	Patent Acts, &c.		1852
Mr. Charles Kendall	Bromley, Middx.	-	Specification	1,078	(1862)
Mr. Robert Musket	Cheltenham	-	Specification	1,202	(1862)
Messrs. John Knight & Co.	Kidderminster	-	Specification	815	(1862)
Mr. J. G. Hey	Cleckheaton	-	Specifications	592	(1852)
"	"	"	"	192	(1853)
"	"	"	"	677	(1853)
"	"	"	"	2,466	(1854)
"	"	"	"	1,812	(1855)
"	"	"	"	1,393	(1856)
"	"	"	"	2,449	(1856)
"	"	"	"	1,288	(1859)
"	"	"	"	592	(1860)
"	"	"	"	866	(1860)
"	"	"	"	1,317	(1860)
"	"	"	"	3,161	(1860)
Mr. Peter J. Linsey	Manchester	-	Specification	2,401	(1861)
"	"	"	"	79	(1853)
Mr. William Jackson	Oldham	-	"	261	(1854)
Mr. James Wright	Glasgow	-	Specification (doffing comb)		
"	"	"	Specification	1,256	(1862)
"	"	"	"	1,280	(1862)
Messrs. J. Petrie & Co.	Rochdale	-	Specifications	1,143	(1862)
"	"	"	"	1,199	(1862)
Mr. W. H. Prece	Southampton	-	Specifications	11,849	O.S.
"	"	"	"	70	(1862)
Mr. John Roeliff	Burnley	-	Specification	1,585	(1862)
Mr. John Tatham	Rochdale	-	Specifications	791	(1862)
"	"	"	"	797	(1862)
Mr. Thomas Sutton	Jersey	-	Specifications	3,030	(1861)
"	"	"	"	3,144	(1861)
"	"	"	"	23	(1862)
"	"	"	"	95	(1862)
"	"	"	"	123	(1862)
"	"	"	"	243	(1862)
"	"	"	"	253	(1862)
"	"	"	"	288	(1862)
"	"	"	"	322	(1862)
"	"	"	"	325	(1862)
"	"	"	"	429	(1862)

Halifax.

Hanley, Staffordshire Potteries (Town Hall).
 Hartlepool, West (*Literary and Mechanics' Institution, Church Street*).
 Hertford (*Free Public Library, Town Hall*).
 Huddersfield (*Improvement Commissioners' Offices, South Parade*).
 Hull (*Mechanics' Institute, George Street*).
 Ipswich (*Museum Library, Museum Street*).
 Keighley (*Mechanics' Institute, North Street*).
 Kidderminster (*Public Free Library, Public Buildings, Vicar Street*).
 King's Lynn, Norfolk (*Stanley Library Athenæum*).
 Lancaster (*Mechanics' Institute, Market Street*).
 Leamington Priors (*Public Library, Town Hall*).
 Leeds (*Town Clerk's Office, Town Hall*).
 Leicester (*Corporation Library, Town Hall*).
 Limerick (*Town Hall*).
 Liverpool (*Free Public Library, Duke Street*).
 London (*British Museum*).
 ——— (*Society of Arts, John Street, Adelphi*).
 Macclesfield (*Useful Knowledge Society*).
 Maidstone (*Free Library*).
 Manchester (*Free Library, Camp Field*).
 Montrose (*Free Library*).
 Newark, Nottingham (*Mechanics' Institute, Middle Gate*).
 Newcastle-upon-Tyne (*Literary and Philosophical Society*).
 Newport, Monmouth (*Commercial Room, Town Hall*).
 Northampton.
 Norwich (*Free Library, St. John's Maddermarket*).
 Nottingham (*Corporation Rooms, St. Peter's Church Side*).
 Oldham (*Town Hall*).
 Oxford (*Public Free Library, Town Hall*).
 Paisley (*Government School of Design, Gilmour Street*).
 Plymouth (*Mechanics' Institute, Princess Square*).
 Preston, Lancashire (*Dr. Shepherd's Library, the Institution, Avenham*).
 Reading (*Literary, Scientific, and Mechanics' Institution, London Street*).
 Rochdale (*Commissioners' Rooms, Smith Street*).
 Rotherham (*Board of Health Offices, Howard Street*).
 Salford (*Royal Museum and Library, Peel Park*).
 Sheffield (*Free Public Library, Surrey Street*).
 Shrewsbury (*Public Museum, College Street*).
 Southampton (*Corporation Library, Audit House*).
 Stirling (*Burgh Library, Town House, Broad Street*).
 Stockport Court House, Vernon Street, Warren Street).
 Sunderland (*Corporation Museum, Athenæum, Fawcett Street*).
 Tiverton.
 Wakefield (*Mechanics' Institution, Barstow Square*).
 Warrington (*The Museum and Library*).
 Waterford (*Town Hall, The Mall*).
 Wednesbury (*Board of Health Offices*).
 Wexford (*Mechanics' Institute, Crescent Quay*).
 Wigan.
 Wolverhampton (*School of Practical Art, Darlington Street*).
 Wolverton (*Railway Station*).
 Yarmouth, Norfolk (*Public Library, South Quay*).
 York (*Lower Council Chamber, Guildhall*).

The Commissioners' Publications have been presented also to the following Public Offices, Seats of Learning, Societies, British Colonies, and Foreign States:—

Public Offices.

Admiralty—Department of the Surveyor of the Navy.
 ——— Steam Branch. Sheerness Dockyard.
 ——— Deptford Dockyard. Portsmouth ditto.
 ——— Woolwich ditto. Devonport ditto.
 ——— Chatham ditto. Pembroke ditto.
 Artillery Institute, Woolwich.
 Board of Trade, Whitehall.
 Ordnance Office, Pall Mall.
 ——— Small Arms' Factory, Enfield.
 War Office, Pall Mall.
 India Office.
 Government Schools of Mines, &c., Jermyn Street, Piccadilly.
 Dublin Castle, Dublin.
 Rolls' Office, Chancery (Four Courts), Dublin.
 Office of Chancery, Edinburgh.

Seats of Learning and Societies.

Cambridge University. Queen's College, Galway.
 Trinity College, Dublin. University College, London.
 Incorporated Law Society, Chancery Lane, London.

British Colonies.

Malta.
 Cape of Good Hope.
 Mauritius.
 India—Bengal.
 North-West Provinces.
 Madras.
 Bombay.
 Ceylon.
 Newfoundland.
 Canada—Library of Parliament, Quebec.
 Patent Office, Toronto.
 Board of Arts and Manufactures for Lower Canada, Montreal.
 Victoria—Patent Office, Melbourne.
 Parliamentary Library, Melbourne.
 Public Library, Melbourne.
 New South Wales.
 South Australia.
 Tasmania.
 New Zealand.
 Nova Scotia.
 New Brunswick.
 Prince Edward Island.
 Antigua.
 Barbados.
 Jamaica.
 Trinidad.
 British Guiana.

Foreign States.

Austria—Handels Ministerium, Vienna.
 Bavaria—Königliche Bibliothek, Munich.
 Belgium—Ministère de l'Intérieur, Brussels.
 France—Bibliothèque Impériale, Conservatoire des Arts et Métiers, Hôtel de Ville, Société Industrielle de Mulhouse. } Paris.
 Gotha—Ducal Friedenstein Collection.
 Hanover—Ministerium des Innern, Hanover.
 Netherlands—Ministère de l'Intérieur, The Hague.
 Prussia—Handels Ministerium, Berlin.
 Königliche Bibliothek, Berlin.
 Russia—Bibliothèque Impériale, St. Petersburg.
 Sardinia—Ufficio delle Privative, Turin.
 Saxony—Polytechnische Schule, Dresden.
 Spain—Madrid.
 Sweden—Stockholm.
 United States—The Patent Office, Washington.
 The Astor Library, New York.
 The State Library, Albany.
 The Franklin Institute, Philadelphia.
 The Free Library, Boston.
 The Philadelphia Library Company.
 Wurtemberg—Bibliothek des Musterlagers, Stuttgart.

It may be here remarked that a set of the Patent publications is of considerable value and magnitude, the whole forming the largest serial scientific work in the world. The cost of printing a single set is more than 1,450*l*. The number of Specifications contained in a set, including those printed to the 22nd November 1862 (the last No. being 1,134 of this year), is 43,458. This amount is made up as follows: Specifications under old law, 13,561. New law: 1852, 1,211; 1853, 3,045; 1854, 2,764; 1855, 2,958; 1856, 3,106; 1857, 3,200; 1858, 3,007; 1859, 3,000; 1860, 3,196; 1861, 3,276; 1862, 1,134. Total, 43,458.

The 43,458 Specifications, when bound, would make 1,711 volumes of moderate thickness. In the free public library at the Great Seal Patent Office the Specifications composing the set devoted to the use of the public are not bound, but are placed in their proper numerical order in 1,711 cardboard cases of imperial 8vo. size. These cases have cloth sides and leather backs, are suitably labelled on the back to indicate the contents, and are arranged on the library shelves in the same manner as bound volumes. This plan of preserving the Specifications for reference has been adopted by several of the libraries to which sets of the Commissioners' works have been presented.

The grant of a set of the Commissioners of Patents' publications includes all the works which may be printed in continuation; and thus the libraries before referred to receive, by weekly deliveries, an annual addition of publications amounting in value to nearly 100*l*., and comprising, besides the Indexes of Patents, Abridgments, Commissioners of Patents' Journals, &c., more than 3,000 Specifications.

In order that reference may be made with the greatest facility to the Specifications of any particular inventions or classes of inventions, Chronological, Alphabetical, and Subject-matter Indexes of Patents have been prepared and printed. In the Chronological Index the titles of Patents appear in chronological order and numbered consecutively; the Alphabetical Index contains the names of Patentees arranged alphabetically; and in the Subject-matter Index the various classes of inventions are placed under their proper heads, so as to afford the means of readily referring to any invention or inventions. The Chronological, Alphabetical, and Subject-matter Indexes under the old law extend from the earliest period to the commencement

of the new law (1st October 1862); and in addition to these indexes, there is a reference index, pointing out the office where each Specification may be found, and the books in which Specifications, law proceedings, and other subjects connected with inventions have been noticed or reported. Under the new law separate Chronological, Alphabetical, and Subject-matter Indexes are prepared for each year.

The Chronological, Alphabetical, Subject-matter, and Reference Indexes to the Patents granted under the old law were purchased (in accordance with the Act 16 Vict., c. 5,) of Mr. Bennet Woodcroft, the Superintendent of Specifications, who had prepared the same for his own private use long before the passing of the "Patent Law Amendment Act, 1852."

An important and highly useful series of works remains to be noticed, namely the Abridgments of Specifications. Each volume contains abstracts or abridgments of one class of inventions only, and so arranged as to form a Chronological, Subject-matter, Reference, and Alphabetical Index to that class. Moreover, the abridgments are sold at prices so moderate as to enable the humblest inventor to examine for himself whether his discovery has been previously patented or not.

A journal, entitled "The Commissioners of Patents' Journal" is published on the evenings of Tuesday and Friday in each week. It contains lists of

- Applications for Letters Patent.
- Grants of provisional protection for six months.
- Inventions protected for six months by the deposit of a complete Specification.
- Notices to proceed.
- Patents sealed.
- Patents extended.
- Patents cancelled.
- Patents on which the third year's stamp duty has been paid.
- Patents which have become void by non-payment of the stamp duty of 50*l.* before the expiration of the third year.
- Patents on which the seventh year's stamp duty has been paid.
- Patents which have become void by non-payment of the stamp duty of 100*l.* before the expiration of the seventh year.
- Colonial Patents and Patent Law.
- Foreign Patents and Patent Law.
- Official advertisements and notices of interest to Patentees and inventors generally.

A specimen case, of the kind used in the library at the Great Seal Patent Office for holding Specifications, is sent herewith, containing:—

- A list of the works printed by order of the Commissioners of Patents.
- Specimen labels for the backs of cases.
- Statement of plans for the preservation or binding of Specifications.
- Price lists of printed Specifications. Old and new law, from the earliest period to the end of the year 1860.
- Pamphlet containing copies of the Acts 15 & 16 Vict. c. 83, 15 Vict. c. 5, and 16 & 17 Vict. c. 115, together with the Rules and Regulations of the Commissioners of Patents.
- Annual Reports of the Commissioners to Parliament for the years 1852-3, 1854, 1855, 1856 1857, 1858, 1859, 1860, and 1861.
- Report of the Commissioners of Patents to the Treasury on the subject of building a Patent Office, library, and museum.

C.

EXTRACT from the 9th ANNUAL REPORT OF THE ROYAL MUSEUM AND LIBRARY OF SALFORD; also a Table furnished by the Librarian, showing the number of references made to the Commissioners' Publications in the years 1854-57.

The specifications of Patents, presented as they are issued by the Honourable the Commissioners of Patents, have been referred to by Patentees and others to a considerable extent; in fact, this collection has become a valuable acquisition to the Salford Library, both from the readiness and facility with which it can be consulted, and from the important information which it supplies. It now numbers 22,946 Specifications, the sale value of which amounts to 732*l.* 8*s.* 7*d.* These have been placed on the shelves in two great divisions of old and new law; the former arranged in numerical order, at present unbound, and the latter (averaging 100 volumes for each year since 1852) bound,

The number of references to the Patents, from May 1855 to the end of October 1857, has been 12,419, and those for the last 12 months number 7,194.

REFERENCES to the SPECIFICATIONS of PATENTS.

	1854-5.	1855-6.	1856-7.
November - - -	—	238	388
December - - -	—	196	281
January - - -	—	308	607
February - - -	—	95	634
March - - -	—	338	504
April - - -	—	357	640
May - - -	153	292	892
June - - -	409	456	423
July - - -	267	501	1,132
August - - -	311	341	491
September - - -	122	392	477
October - - -	344	105	725
	1,606	3,619	7,194

Total 12,419 volumes referred to in 30 months, including indexes.
Average 410 volumes monthly.

D.

TABLE extracted from THE EIGHTH ANNUAL REPORT (for 1860) on the working of the FREE LIBRARY, CAMP FIELD, MANCHESTER.

SPECIFICATIONS OF PATENTS.

Subjects referred to and number of references for the years ending September 5th 1857, 1858, 1859, and 1860, respectively.

Subjects referred to.	Number of References.			
	1860.	1859.	1858.	1857.
Adhesive substances - - -	149	144	—	141
Agriculture - - -	47	118	242	622
Air engines - - -	97	—	—	—
Alarums, snares, &c. - - -	—	4	38	—
Building materials and processes - - -	567	1342	1,326	941
Bearings, wheels, &c. - - -	3	235	748	363
Brewing and distilling - - -	176	15	152	286
Brush making, &c. - - -	7	—	24	—
Boots, shoes, clogs, &c. - - -	54	131	—	256
Chemical compositions - - -	283	1829	355	—
Clocks and watches - - -	7	74	340	—
Cutting and working wood - - -	3	209	176	—
Coaches and other road conveyances - - -	—	—	—	160
Drawing, &c. - - -	111	—	—	—
Dyeing and colouring - - -	625	692	260	257
Engraving and printing - - -	266	1,162	420	1,069
Electricity and galvanism - - -	99	217	98	—
Embossing, gilding, &c. - - -	66	2	76	53
Fire-arms - - -	43	343	8	—
Gas manufacture - - -	660	8,785	718	264
Grinding, &c. - - -	10	—	284	—
Glass - - -	89	—	192	—
Hoisting machines - - -	13	115	602	168
Household furniture - - -	85	—	—	—
India-rubber and gutta-percha - - -	269	68	258	449
Light and lighting - - -	376	9	286	—
Locks and keys - - -	69	—	100	184
Medical treatment - - -	325	—	—	—
Metals and metallic substances - - -	583	198	1,061	2,197
Motive power and propulsion - - -	1797	221	437	1,243
Measuring and numbering - - -	—	4	258	490
Metals, cutting and working - - -	20	204	202	—
Musical instruments - - -	—	268	120	100
Manure - - -	230	21	—	—
Nails and screws - - -	193	8	119	195
Oleaginous substances - - -	386	1,094	2,466	1,429
Paper-making - - -	67	36	686	1,190
Preserving and cooking - - -	—	24	120	—
Prevention of accidents - - -	—	—	187	276
Packing and pressing - - -	2	46	116	—
Paint and painting - - -	3	—	103	—
Paving and road-making - - -	5	—	50	—
Railways and railway rolling stock - - -	1154	839	1,295	2,185
Refrigerating and cooling - - -	91	40	26	—
Steam and steam engines - - -	2834	2,717	3,169	728
Smoke prevention - - -	145	1,056	1,378	206
Sewing machines - - -	2514	1,100	626	578
Soap manufactures - - -	339	256	320	97
Ship building and navigation - - -	20	1	26	—
Stone working - - -	5	8	73	—
Sugar - - -	169	1,792	—	—
Sundries under various other classes - - -	—	440	28	509
Textile fabrics, and processes connected therewith - - -	9813	8,414	6,261	1,639
Tools for mechanical purposes - - -	168	202	839	64
Tanning and currying - - -	30	2	250	250
Telegraphs and signals - - -	1865	100	120	503
Tar, pitch, and resin - - -	29	1	113	48
Trunks, boxes, bags, &c. - - -	6	—	120	65
Type founding - - -	1	20	—	—
Umbrellas - - -	105	230	—	—
Ventilation - - -	312	23	—	120
Water and other fluids, conducting and filtering - - -	232	525	326	1,462

Subjects referred to.	Number of References.			
	1860.	1859.	1858.	1857.
Waterproofing, &c. - - -	128	—	—	—
Working of pearl, ivory, bone, &c. - -	—	34	47	—
Wearing apparel - - -	95	26	—	100
Miscellaneous (being unbound the } classification could not be taken }	1912	1,533	—	—
	29,241	36,972	27,856	20,877

Number of Patents granted during the last two years and nine months of the Old Law.

Year.	Patents Granted.	Imported from Abroad.
1850	512	85
1851	468	60
1852	469	88
(9 months.)		

E.

TABLES furnished at the REQUEST OF VICE-CHANCELLOR WOOD.

Number of disclaimers and memorandum of alterations enrolled during the last two years and nine months of the old law :—

Year.	Number.
1850 - - -	- 18
1851 - - -	- 22
1852 (9 months) - - -	- 18
New Law.	
1852 - - -	- 7
1853 - - -	- 15
1854 - - -	- 9
1855 - - -	- 12
1856 - - -	- 8
1857 - - -	- 13
1858 - - -	- 9
1859 - - -	- 6
1860 - - -	- 2
1861 - - -	- 3

Number of Patents granted from October 1st, 1852, to December 31st, 1861.

Year.	Patents Granted.	Imported from Abroad.
1852 (3 months.)	1,211	197
1853	3,045	606
1854	2,764	367
1855	2,958	825
1856	3,099	541
1857	3,200	801
1858	3,007	708
1859	3,000	545
1860	3,196	632
1861	3,276	884

Number of Patents repealed by scire facias from 1617 to October 1852 - - - 19
Number of Patents repealed by scire facias from October 1852 to December 1861 - - - None.

RETURN of the number of OBJECTIONS filed in the Office of the Commissioners of Patents for Inventions on the Applications for Letters Patent of each Year, 1852 to 1861 inclusive.

Objections to Grant of Letters Patent before the Law Officer.				Objections to sealing Letters Patent before the Lord Chancellor.				
Years.	Objections allowed.	Objections disallowed.	Application for Letters Patent abandoned.	Objections allowed.	Objections disallowed.	Application for Letters Patent abandoned.	Objections pending.	TOTAL.
1852	5	60	4	1	3			73
1853	11	103	12	1	4			136
1854	5	56	6	-	2			69
1855	7	41	1	1	6	1		57
1856	7	49	5	1	4	-		66
1857	4	44	6	-	2	-	-	56
1858	3	41	4	-	1	-	-	49
1859	2	41	-	-	4	1	-	48
1860	3	31	4	-	1	-	1	40
1861	7	21	2		2		-	32

TABLE showing the number of PATENTS granted by various STATES during the last TWENTY YEARS.

Year.	Great Britain.				France.	United States.		Belgium.	Austria.	Italy.	Saxony.	Prussia.	Sweden and Norway.	Wurtemberg.	Bavaria.	Hanover.	Russia.	Netherlands.	Baden.	Grand Duchy Hesse.
	Applications for Patents.	Patents sealed.	Paid Stamp Duty of £50.	Paid Stamp Duty of £100.	Patents and certificates of addition.	Application for Patents.	Patents granted.													
1842		371				761	517	From 1830 to 1854.					36			2				
1843		420				819	531						41			2				
1844		450				722	502						50	25		4			5	14
1845		572			2,666	1,246	502						50	22		6			4	5
1846		493			2,750	1,272	619						58	18		7			9	9
1847		493			2,937	1,581	572	7,497					69	12		10			5	11
1848		383			1,191	1,628	660						72	8		16			6	7
1849		514			1,953	1,955	1,076						80	6		8			8	3
1850		513			2,272	2,193	995						87	16		11			2	6
1851		455			2,462	2,258	889						61	26		16			8	1
1852	Jan. to Oct.	470											-	-		-			-	-
Oct. to Decr.																				
1852	1,211				3,279	2,639	1,020	From 1854 to 1861.					79	16		8			9	
1853	3,045	3,099	319	110	4,065	2,673	958		406				81	17		23			10	
1854	2,764	1,876	618	202	4,563	3,324	1,302		401		73		86	29		15			12	
1855	2,958	2,044	510		5,398	4,435	2,024		584	224	78		67	27		32			8	
1856	3,108	2,094	558		5,761	4,960	2,502		645	199	120		73	38		41			22	
1857	3,200	2,028	567		6,110	4,771	2,910		715	221	120		64	54		29			35	
1858	3,007	1,954	583		5,128	5,364	3,710	11,941	719	170	106		41	42		32			27	
1859	3,000	1,975	540		5,439	6,225	4,538		654	139	112		47	46		43			30	
1860	3,198	2,061			6,122	7,653	4,819		468	183	131		84	70		65			38	
1861	3,276	2,047			5,941	4,643	3,340		569	224	134		99			51			28	

F.

RESULTS of the EXAMINATION of the first hundred inventions for which applications for Patents were made in each of the years 1855, 1858, and 1862.

A.D. 1855.

Of the first hundred inventions for which applications for Patents were made in the year 1855, none are apparently of considerable value; but I believe it to be impossible to predict beforehand the value of any invention.

Four of the hundred inventions appear to be of some, but not of great value, and Patents were granted for all of them.

One of these Patents expired at the end of the third year of the grant, and two at the end of the seventh year; and consequently only one continues in force.

The remaining 96 of the hundred inventions seem to be of little or no value; and Patents were granted for 66 of them. One of these Patents became void at the end of the term of six months from the date thereof for want of a final Specification; 50 expired at the end of the third year of the grant, and 13 at the end of the seventh year; and consequently only two continue in force. Patents were not obtained for the remaining 30 of the 96 inventions.

It may be further remarked, that 16 of the above-mentioned 96 inventions are on the face of them old; six partly old; and others might be found to be old on examination; and one for giving circular motion to a shaft, although new, is costly, complicated, and utterly unfit for use.

Complete Specifications were filed with the applications in two cases only out of the hundred applications for Letters Patent.

A.D. 1858.

Of the first hundred inventions for which applications for Patents were made in the year 1858, none are apparently of considerable value.

Three of the hundred inventions appear to be of some but not of much value; and Patents were granted for all of them; but these Patents expired at the end of the third year of the grant.

The remaining 97 of the hundred inventions seem to be of little or no value; and Patents were granted for 62 of them. 48 of these Patents expired at the end of the third year of the grant, and 14 continue in force, but have not yet reached the seventh year of the term. Patents were not obtained for the remaining 35 of the 97 inventions.

Fourteen of the above-mentioned 97 inventions are obviously old; one partly old; many more on examination might be found to be old; one for making curtains and wall hangings of india-rubber is of a ridiculous character; and one ought not to have formed the subject of Letters Patent, but should have been registered under the Designs Act.

Complete Specifications were filed with the applications in two cases only out of the hundred applications for Letters Patent.

A.D. 1862.

Of the first hundred inventions for which applications for Patents were made in the year 1862, one is apparently of considerable value; and a Patent was granted for it, which is still in force.

Of the same hundred inventions one appeared to be of some but not of great value; and a Patent was granted for it, which also is still in force.

The remaining 98 of the hundred inventions seem to be of little or no value. Patents were granted for 59 of them, but not for the other 39. Three of these Patents became void at the end of the term of six months from the date thereof, for want of a Final Specification. Fifty-six Patents are consequently still in force, but have not yet reached the third year of the term.

Seven of the before-mentioned 98 inventions are old; others, on examination, might be found to be so; one is for an absurd mode of lubricating axles; and one is a scheme for a perpetual motion.

A Complete Specification was filed with the application in one case only out of the hundred applications for Letters Patent.

In our own country the probability is that many of the greatest improvements in arts, manufactures, and locomotion, would not to this hour have been brought into actual operation had preliminary examination been adopted.

In the following cases I wish it to be understood that I believe that almost all the Patentees were the true inventors of what they brought into operation, but they were not the first inventors; still it is from the second inventors the public has been so greatly benefited:—

Richard Arkwright's spinning frame was anticipated by that of Lewis Paul.

James Nasmyth's steam hammer was anticipated by that proposed and patented by James Watt.

Francis Petit Smith's screw propeller was anticipated by that proposed and patented by Charles Cummerow.

Francis Ronalds transmitted messages by electricity through eight miles of wire in the year 1816.

Messrs. Ruthven's method of propelling vessels by the discharge of water had formed the subject of an invention for which William Busk obtained a Patent.

Franz Uchatius' improvement in the manufacture of cast steel was anticipated by the invention of John Wood, patented more 90 years before.

Thomas Aldridge Weston's improved pulley, or system of pulleys, had been invented many years previous by Mr. Moore, and described in Carpenter's Mechanical Philosophy.

Numerous other cases could be given of great inventions which never had been used, or that had fallen into disuse, but which were revived by subsequent inventors.

To meet cases of this sort the clause (sect. II.) introduced by Lord Brougham into the Act 5 and 6 Will. IV., cap. 83, seems to have been too little acted upon.

G.

PRUSSIAN PATENTS.

On the 8th July 1853, a circular of inquiry relating to an amendment of the Prussian Patent Law was addressed by the Minister of Commerce, Trades, and Public Works, to various provincial governments and chambers of commerce in Prussia.

The most important question contained in the circular was whether previous examination before the grant of a Patent should be continued, or whether Patents should be granted without preliminary examination, leaving such investigation to be made when the Patent should be disputed.

The Chamber of Commerce at Berlin, the only one whose reply has been printed, was very decided in its condemnation of preliminary examination before the grant of a Patent.

The number of Patents applied for and granted in Prussia during each of the years 1860, 1861, and 1862, was as follows:

Year.	Applications.	Grants.
1860	974	83
1861	931	102
1862	973	75
Total in 3 years	2,878	250

Patents were, therefore, granted to only about 11 per cent. of the applications.

It is not unfrequently the case that the Royal Board of Examiners, who report to the Minister of Commerce, Trade, and Public Works upon the novelty of an invention in the first instance before a Patent granted, subsequently find the invention to be old; and on their making a further report, to that effect, the Patent is cancelled.

The following copies of translations of documents relating to Prussian Patents show the process of granting and annulling or repealing Patents in Prussia:

1. Patent refused for want of novelty.
2. Patent refused for want of novelty.
3. Offer of Patent on certain conditions.
4. Delivery of Patent cannot take place on account of prior publication of the invention.
5. Copy of Patent.
6. Summons to produce evidence that the Patent has been worked.
7. Prolongation of the term within which the Patent must be worked.
8. Second summons to produce evidence that the Patent has been worked.
9. Annulment of Patent for want of evidence that it has been worked.
10. Annulment of Patent for want of evidence that it has been worked within the prolonged term.
11. Annulment of Patent for want of novelty.

[1. Patent refused for want of novelty.]

Translation.

According to the opinion of the Royal Board of Examiners, the process of separating silver from lead, as described in

your annexed application of the 22d November ult., is a combination of operations which have already been applied separately to the same object, and, therefore, according to the existing principles, cannot be considered as new and patentable.

Consequently your application for a Patent cannot be taken into consideration.

Berlin, 22d Feb., 1863.

Board of Commerce, Trades, and Public Works.

IV. Section.

[2. Patent refused for want of novelty.]

Translation.

In reply to your annexed application for the Patent, dated 20th Dec. ult., you are informed that the Royal Board of Examiners are of opinion that neither the manufacture of crystallized chloride of lime, nor the use of said salt for deadening or fading colours, as described therein, present any novel or peculiar feature.

Consequently the Patent applied for cannot be granted.

Berlin, 2d Feb. 1863.

Board of Commerce, Trades, and Public Works.

IV. Section.

[3. Offer of Patent on certain conditions.]

Translation.

From the report made by the Royal Board of Examiners on your application for a Patent, dated 17th ult., it appears that night signals produced by an intermittent concealment of the illuminating body, abstractedly speaking are well known. Irrespectively, however, of this, your signal-apparatus for telegraphing at night, and especially the mechanism for transmitting the rotary motion of the wooden cylinder provided with projections, on the lever apparatus operating the lift and descent of the screen, must be recognized as new and peculiar.

You shall therefore obtain a Patent for

“ A signal apparatus for night telegraphs as illustrated “ by a drawing and description, and as far as the same has “ been ascertained to be new and peculiar, without preventing “ others from using known parts thereof ” for the term of five years throughout the Prussian Monarchy, provided you are willing to accept such a grant under those conditions. Your decision on that point must be delivered within four weeks.

The other day signals, as proposed by you, do not exhibit any novelty in principle, nor any improvements in practice of such like known arrangements ; for said signals, therefore, you cannot obtain a patent.

Berlin, 23 December 1862.

The Minister of Commerce, Trade, and Public Works.

By order,

(Signed) DELBRUCK.

[4. Delivery of Patent cannot take place, on account of prior publication of the invention.]

Translation.

According to a communication made by the Royal Board of Examiners, the whole arrangement of the centrifugal drying machine, as described in your application for a Patent of the 18th June A. C., has been completely published by drawing and description in the *London Journal of Arts and Sciences*, p. 341, June 1862. Thus the supposition that the arrangement of suspended plates in this machine for the reception of vessels containing the material about to be dried presented a novel and peculiar feature, on the ground of which supposition a Patent for that part of the machine was offered to you on the 15th of last month, holds no longer good, and consequently according to art. I of the convention concluded on the 21st September 1842, between the different States of the Zollverein, the delivery of the Patent cannot take place. In bringing this to your notice you are requested to apply for the return of the documents accompanying your petition of the 18th June A.C., and of the amount of one dollar sent in with your declaration of the 17th of last month.

Berlin, 4th Aug. 1862.

The Minister of Commerce, Trades, and Public Works.

(Signed) VON HOLZBRINK.

[5. Copy of Patent.]

Translation.

By the supreme consent of His Royal Highness the Prince Regent of Prussia, in the name of His Majesty the King, I grant the Patent applied for by Mr. J. H. F. Prillwitz, merchant of this town, for a machine for moulding candles as detailed by a description and drawing, without limiting other parties in using known parts of said machine.

The present Patent becomes valid from to-day for five consecutive years in the whole extent of the Prussian monarchy, the Patentee, however, being bound to fulfil all the conditions of the Proclamation of the 14th October 1815 relating to the grant of Patents, with the exception of s. 5 concerning its publication, which will be undertaken by the Government.

It is required most especially that the Patent machine should be put into practice in the Prussian monarchy within 12 months from the date of the present patent, and that such working should be attested by an official document under pain of forfeiture of the privilege.

The cancellation, moreover, of the Patent is reserved, in case it should not be worked for a whole year during its duration. On the other hand, the Patentee, by fulfilling said conditions, shall be protected everywhere in the exclusive enjoyment of his Patent during its legal term according to said Proclamation. No secrecy, however, about the Patent article is warranted to Mr. Prillwitz by said protection of the Government ; the Patent, moreover, is to be considered as cancelled (expired) whenever it can be shown that the supposition of novelty and peculiarity on which the grant of the Patent is based has been erroneous.

Berlin, 23 October 1859.

The Minister of Commerce, Trade, and Public Works.

(L.S.) (Signed) VON DER HEYDT.

[6. Summons to produce Evidence that the Patent has been worked.]

Translation.

You are herewith requested to produce, within four weeks, the required evidence about the practical working of your twisting machine as Patented on the 21st Feb. of last year, in default of which the Patent will be declared to be extinct.

Berlin, 10th March 1862.

Ministry of Commerce, Trade, and Public Works.

IV. Section.

(Signed) HÖNE.

[7. Prolongation of the term within which the Patent must be worked.]

Translation.

In consideration of the circumstances adduced in your application of the 1st day of this month, the required prolongation of another year for producing evidence as to the actual working in the Prussian monarchy of your rotary press for conglomerating coal dust for fuel, as Patented 2nd April of last year, is herewith granted to you.

Berlin, 11th March 1862.

Ministry of Commerce, Trade, and Public Works.

IV. Section.

(Signed) HOENE.

[8. Second summons to produce evidence that the Patent has been worked.]

Translation.

With reference to the term of three months granted to you on the 1st December of last year, you are herewith requested to produce evidence as to the practical working of your brick machine, as patented on the 20th November 1860, within four weeks, at the latest, in default of which the Patent granted to you will be cancelled without further notice.

Berlin, 6th March 1862,

Ministry of Commerce, Trade, and Public Works.

IV. Section.

(Signed) HOENE.

[9. Annulment of Patent or want of evidence that it has been worked.]

Translation.

The Patent granted to you on the 20th November 1860 for a brick machine in its entire composition, as far as

according to drawing and description, the same has been deemed to be new and peculiar, and without preventing others from using known parts thereof, has been annulled agreeably to the proper warning to you, and in consequence of your having failed to produce evidence as to the working of the machine within the term granted to you on the 16th March of this year.

Berlin, 6 May 1862.

Ministry of Commerce, Trade, and Public Works.

By order

(Signed) DELBRUCK.

[10. Annulment of Patent for want of evidence that it has been worked within the prolonged term.]

Translation.

The Patent granted to you for an imported invention of "a freezing apparatus," as illustrated by a drawing and description, the entire combination of which has been found to be novel and peculiar, and without preventing other parties from using known parts thereof, has been cancelled according to the notice given to you on the 12th of July of last year, since you failed to give evidence as to the working of the Patent apparatus within the prolonged term up to the 15th of the present month.

The Minister of Commerce, Trades, and Public Works.

By order

(Signed) DELBRUCK.

Berlin, 28th January 1863.

[11. Annulment of Patent for want of novelty.]

Translation.

The Patent for an imported invention granted to you on the 1st of December 1858, for the term of five years, and bearing the following title:—

"An apparatus in presses for the manufacture of pressed leaden pipes, and for tinning their inside,"

contains the provision that the Patent shall be considered as null and void (extinct), in case it should be shown that the supposition made in granting the same, viz., that the object was new and peculiar, or that it has first been introduced into the Prussian monarchy, or worked by you, has been erroneous.

According to a report made by the Royal Board of Examiners, said Patent apparatus is the same as has been Patented on the 28th January 1858 by John Henry Johnson, the Official Specification being published by the Patent Office, sub. No. 156, ann. 1858.

Now the mere fact (if known), of the Specification containing the complete drawing and description of said apparatus, having already long been published previous to the date of your Patent, would, according to provision I. of the convention concluded on the 21st September 1842, between the different States of the Zollverein, have sufficed for a rejection of your application. But it is shewn, moreover, thereby, that the apparatus had been brought to general public notice by a publication even previous to the day when the Patent was granted, and since, according to the express provision of said convention, Patents are not to be granted, even in case of their being applied for *previous* to such a publication, your appeal of the 28th March A.C. is not to be taken into consideration, but, on the contrary, said Patent for an important invention must be and is herewith cancelled, according to the provision contained therein, since the supposition made in granting the Patent of the 1st December of last year, viz., that the object was new and peculiar, and was not yet known in Prussia, proves to be erroneous.

Berlin, 4th May 1859.

The Minister of Commerce, Trades, and Public Works,

(Signed) VON DER HEYDT.

(2.)—APPENDIX to the EVIDENCE of MR. EDMUNDS.

APPENDIX A.

RULES AND REGULATIONS.

[*This Paper contains all the Rules and Regulations now in force.—31st Dec. 1861.*]

Patent Law Amendment Act, 1852.—Rules and Regulations under the Acts 15 & 16 Vict. c. 83, and 16 & 17 Vict. c. 115, for the passing of Letters Patent for Inventions.

PATENT LAW AMENDMENT ACT, 1852.

FIRST SET OF RULES AND REGULATIONS under the Act 15 & 16 Vict. c. 83., for the passing of Letters Patent for Inventions.

By the Right Honourable Edward Burtenshaw Lord St. Leonards Lord High Chancellor of Great Britain, the Right Honourable Sir John Romilly Master of the Rolls, Sir Frederic Thesiger Her Majesty's Attorney General, and Sir FitzRoy Kelly Her Majesty's Solicitor General, being four of the Commissioners of Patents for Inventions under the said Act.

Whereas a commodious office is forthwith intended to be provided by the Crown as the Great Seal Patent Office; and the Commissioners of Her Majesty's Treasury have, under the powers of the said Act, appointed such office as the office also for the purposes of the said Act.

I. All petitions for the grant of Letters Patent, and all Declarations and Provisional Specifications, shall be left at the said Commissioners' office, and shall be respectively written upon sheets of paper of twelve inches in length by eight inches and a half in breadth, leaving a margin of one inch and a half on each side of each page, in order that they may be bound in the books to be kept in the said office.

II. The drawings accompanying Provisional Specifications shall be made upon a sheet or sheets of parchment, paper, or cloth, each of the size of twelve inches in length by eight inches and a half in breadth, or of the size of twelve inches in breadth by seventeen inches in length, leaving a margin of one inch on every side of each sheet.

III. Every provisional protection of an invention allowed by the Law Officer shall be forthwith advertised in the London Gazette, and the advertisement shall set forth the name and address of the petitioner, the title of his invention, and the date of the application.

IV. Every invention protected by reason of the deposit of a Complete Specification shall be forthwith advertised in the London Gazette, and the advertisement shall set forth

the name and address of the petitioner, the title of the invention, the date of the application, and that a Complete Specification has been deposited.

V. Where a petitioner applying for Letters Patent after provisional protection, or after deposit of a Complete Specification, shall give notice in writing at the office of the Commissioners of his intention to proceed with his application for Letters Patent, the same shall forthwith be advertised in the London Gazette, and the advertisement shall set forth the name and address of the petitioner and the title of his invention; and that any persons having an interest in opposing such application are to be at liberty to leave particulars in writing of their objections to the said application at the office of the Commissioners within twenty-one days after the date of the Gazette in which such notice is issued.

VI. The Lord Chancellor having appointed the Great Seal Patent Office to be the office of the Court of Chancery for the filing of Specifications, the said Great Seal Patent Office and the office of the Commissioners shall be combined; and the Clerk of the Patents for the time being shall be the Clerk of the Commissioners for the purposes of the Act.

VII. The office shall be open to the public every day, Christmas Day and Good Friday excepted, from ten to four o'clock.

VIII. The charge for office or other copies of documents in the office of the Commissioners shall be at the rate of twopence for every ninety words.

(Signed)

ST. LEONARDS, C.
JOHN ROMILLY, M.R.
FRED. THESIGER, A.G.
FITZROY KELLY, S.G.

Dated the 1st Oct. 1852.

PATENT LAW AMENDMENT ACT, 1852,
15 & 16 VICT. c. 83.

By the Right Honourable Edward Burtenshaw Lord St. Leonards Lord High Chancellor of Great Britain, and the Right Honourable Sir John Romilly Master of the Rolls.

Ordered, That there shall be paid to the Law Officers and to their clerks the following fees:

By the person opposing a grant of Letters Patent.

	£	s.	d.
To the Law Officer -	-	-	2 12 6
To his clerk -	-	-	0 12 6
To his clerk for summons •	-	-	0 5 0

By the petitioner on the hearing of the case of opposition.

To the Law Officer -	-	-	£ s. d.
To his clerk -	-	-	2 12 6
To his clerk for summons -	-	-	0 12 6
			0 5 0

By the petitioner for the hearing, previous to the fiat of the Law Officer allowing a Disclaimer or Memorandum of Alteration in Letters Patent and Specification.

To the Law Officer -	-	-	2 12 6
To his clerk -	-	-	0 12 6

By the person opposing the allowance of such Disclaimer or Memorandum of Alteration, on the hearing of the case of opposition.

To the Law Officer -	-	-	2 12 6
To his clerk -	-	-	0 12 6

By the petitioner for the fiat of the Law Officer allowing a Disclaimer or Memorandum of Alteration in Letters Patent and Specification.

To the Law Officer -	-	-	3 3 0
To his clerk -	-	-	0 12 6

(Signed) ST. LEONARDS, C.
JOHN ROMILLY, M.R.

Dated the 1st Oct. 1852.

PATENT LAW AMENDMENT ACT, 1852,
15 & 16 VICT. c. 83.

Ordered by the Right Honourable Edward Burtenshaw Lord St. Leonards, Lord High Chancellor of Great Britain.

I. All Specifications in pursuance of the conditions of Letters Patent, and all Complete Specifications accompanying petitions and declarations before grant of Letters Patent, shall be filed in the Great Seal Patent Office.

II. All Specifications in pursuance of the conditions of Letters Patent, and all Complete Specifications accompanying petitions for the grant of Letters Patent, shall be respectively written bookwise upon a sheet or sheets of parchment, each of the size of twenty-one inches and a half in length by fourteen inches and three fourths of an inch in breadth; the same may be written upon both sides of the sheet, but a margin must be left of one inch and a half on every side of each sheet.

III. The drawings accompanying such Specifications shall be made upon a sheet or sheets of parchment, each of the size of twenty-one inches and a half in length by fourteen inches and three fourths of an inch in breadth, or upon a sheet or sheets of parchment, each of the size of twenty-one inches and a half in breadth by twenty-nine inches and a half in length, leaving a margin of one inch and a half on every side of each sheet.

IV. The charge for office or other copies of documents in the Great Seal Patent Office shall be at the rate of twopence for every ninety words.

(Signed) ST. LEONARDS, C.

Dated the 1st Oct. 1852.

NOTE.—It is recommended to applicants and patentees to make their elevation drawings according to the scale of one inch to a foot.

PATENT LAW AMENDMENT ACT, 1852.

SECOND SET OF RULES AND REGULATIONS under the Act 15 & 16 Vict. c. 83., for the passing of Letters Patent for Inventions.

By the Right Honourable Edward Burtenshaw Lord St. Leonards Lord High Chancellor of Great Britain, the Right Honourable Sir John Romilly Master of the Rolls, Sir Frederic Thesiger Her Majesty's Attorney General, and Sir FitzRoy Kelly Her Majesty's Solicitor General, being four of the Commissioners of Patents for Inventions under the said Act.

I. The office of the Directory of Chancery in Scotland, being the office appointed by the Act for the recording of Transcripts of Letters Patent, shall be the office of the Commissioners in Edinburgh for the filing of copies of Specifications, Disclaimers, Memoranda of Alterations, Provisional Specifications, and certified duplicates of the Register of Proprietors.

II. All such transcripts, copies, and certified duplicates shall be bound in books, and properly indexed; and shall be open to the inspection of the public at the said office, every day from ten to three o'clock.

III. The charge for office copies of such transcripts, copies, and certified duplicates, recorded and filed in the said office, shall be at the rate of twopence for every ninety words.

IV. The Enrolment office of the Court of Chancery in Dublin, being the office appointed by the Act for the enrolment of transcripts of Letters Patent, shall be the office

of the Commissioners in Dublin for the filing of copies of Specifications, Disclaimers, Memoranda of Alterations, Provisional Specifications, and certified duplicates of the Register of Proprietors.

V. All such transcripts, copies, and certified duplicates shall be bound in books, and properly indexed, and shall be open to the inspection of the public at the said Enrolment Office every day, Christmas Day and Good Friday excepted, from ten to three o'clock.

VI. The charge for office copies of such transcripts, copies, and certified duplicates, enrolled and filed as aforesaid, shall be at the rate of twopence for every ninety words.

~~VII. No Warrant is to be granted for the sealing of any Letters Patent which contains two or more distinct substantive inventions.~~

VIII. A provision is to be inserted in all Letters Patent in respect whereof a Provisional and not a Complete Specification shall be left on the application for the same, requiring the Specification to be filed within six months from the date of the application.

IX. No amendment or alteration, at the instance of the applicant, will be allowed in a Provisional Specification after the same has been recorded, except for the correction of clerical errors or of omissions made *per incuriam*.

X. The Provisional Specification must state distinctly and intelligibly the whole nature of the invention, so that the Law Officer may be apprised of the improvement, and of the means by which it is to be carried into effect.

(Signed) ST. LEONARDS, C.
JOHN ROMILLY, M.R.
FRED. THESIGER, A.G.
FITZROY KELLY, S.G.

Dated the 15th Oct. 1852.

PATENT LAW AMENDMENT ACT, 1852,
15 & 16 VICT. c. 83.

Ordered by the Right Honourable Edward Burtenshaw Lord St. Leonards, Lord High Chancellor of Great Britain.

Every application to the Lord Chancellor against or in relation to the sealing of Letters Patent shall be by notice, and such notice shall be left at the Commissioners' Office, and shall contain particulars in writing of the objections to the sealing of such Letters Patent.

(Signed) ST. LEONARDS, C.

Dated the 15th of Oct. 1852.

The Lord Chancellor (Lord Cranworth) and the Master of the Rolls, by the following Report, dated the 1st May 1853, for the reasons therein contained, reduced the scale of fees to be allowed to the Attorney and Solicitor General of England and their clerks.

Patent Law Amendment Act, 1852. 15 & 16 Vict. c. 83.

"To the Lords Commissioners of Her Majesty's Treasury.

"We, the Right Honourable Robert Monsey Lord Cranworth, Lord High Chancellor of Great Britain, and the Right Honourable Sir John Romilly, Master of the Rolls, being two of the Commissioners of Patents for Inventions under the above-mentioned Act,

"REPORT as follows:

"Whereas the Right Honourable Edward Burtenshaw Lord St. Leonards, Lord High Chancellor of Great Britain, and the Right Honourable Sir John Romilly, Master of the Rolls, did by their Report of the 13th day of December last, addressed to the Lords Commissioners of Her Majesty's Treasury, under the provisions of the 48th section of the said Act, appoint the following scale of fees to be paid to the Law Officers and their clerks, on passing Letters Patent for inventions, until further orders:

"Four guineas to the Law Officer on each reference for provisional protection, under section 8 of the Act.

"Four guineas to the Law Officer on each reference of Complete Specification on application for warrant, sections 9 and 12 of the Act.

"Ten shillings to the clerk of the Law Officer on each of the above references.

"Two guineas to the Law Officer on each warrant for Letters Patent:

"And the said Lord St. Leonards and Master of the Rolls did also in their said Report recommend that the Lord Chancellor and Master of the Rolls for the time being should meet at the end of every current year, and should report to the Treasury from time to time, whether in their opinion it is expedient that any of the fees in the said

Report recommended, or to be recommended by any future Report, should be varied or altered :

"And whereas it appears to us, from the number of applications recorded in the Commissioners' Office since the date of the said Report, that the fee payable to the Law Officer for the current year, upon the scale appointed by the said Report, will in the aggregate amount to a much larger sum than is reasonable and proper for the due remuneration of the said Law Officers and their clerks :

"Therefore, we do hereby appoint that, from and after the 15th day of May instant, the following fees shall be paid to the Law Officers and their clerks until further order, in lieu of the before-mentioned fees settled by the said former order, that is to say—

"Two guineas to the Law Officer on each reference for provisional protection, under section 8 of the Act.

"Two guineas to the Law Officer on each reference of Complete Specification on application for warrant, sections 9 and 12 of the Act.

"Five shillings to the clerk of the Law Officer on each of the above references.

"One guinea to the Law Officer on each warrant for Letters Patent."

The Lords Commissioners of Her Majesty's Treasury, by minute of the 17th May 1853, fully concurred in the propriety of reducing the scale of fees allowed to the Law Officers as recommended in the above Report, and thereby sanctioned the same.

PATENT LAW AMENDMENT ACT, 1852.

THIRD SET OF RULES AND REGULATIONS under the Act 15 & 16 Vict. c. 83., for the passing of Letters Patent for Inventions, and under the Act of the 16 & 17 Vict. c. 115.

By the Right Honourable Robert Monsey Lord Cranworth Lord High Chancellor of Great Britain, the Right Honourable Sir John Romilly Master of the Rolls, Sir Alexander James Edmund Cockburn Her Majesty's Attorney General, and Sir Richard Bethell Her Majesty's Solicitor General, being four of the Commissioners of Patents for Inventions under the said Act of the 15 & 16 Vict. c. 83.

It is ordered as follows :—

Rule VII. of the Second Set of Rules and Regulations of the Commissioners, dated the 15th October 1852, is hereby rescinded.

I. Every application for Letters Patent, and every title of invention and Provisional Specification, must be limited to one invention only, and no provisional protection will be allowed or warrant granted where the title or the Provisional Specification embraces more than one invention.

II. The title of the invention must point out distinctly and specifically the nature and object of the invention.

III. The copy of the Specification, or Complete Specification, directed by the Act 16 & 17 Vict. c. 115. sect. 3. to be left at the office of the Commissioners on filing the Specification or Complete Specification shall be written upon sheets of brief or foolscap paper, briefwise, and upon one side only of each sheet. The extra copy of drawings, if any, left with the same, must be made as heretofore, and according to the directions contained in Rule III. of the Lord Chancellor, dated the 1st October 1852.

IV. The copy of the Provisional Specification to be left at the office of the Commissioners on depositing the same shall be written upon sheets of brief or foolscap paper, briefwise, and upon one side only of each sheet. The extra copy of drawings, if any, left with the same, must be made as heretofore, and according to the directions contained in Rule II. of the Commissioners, dated the 1st October 1852.

V. All Specifications, copies of Specifications, Provisional Specifications, petitions, notices, and other documents left at the office of the Commissioners, and the signatures of the petitioners or agents thereto, must be written in a large and legible hand.

VI. In the case of all petitions for Letters Patent left at the office of the Commissioners after the 31st day of December 1853, the notice of the applicant of his intention to proceed for Letters Patent for his invention shall be left at the office of the Commissioners eight weeks at the least before the expiration of the term of provisional protection thereon, and no notice to proceed shall be received unless the same shall have been left in the office eight weeks at the least before the expiration of such provisional protection; and the application for the warrant of the Law Officer and for the Letters Patent must be made at the

office of the Commissioners twelve clear days at the least before the expiration of the term of provisional protection, and no warrant or Letters Patent shall be prepared unless such application shall have been made twelve clear days at the least before the expiration of such provisional protection: Provided always, that the Lord Chancellor may in either of the above cases, upon special circumstances, allow a further extension of time, on being satisfied that the same has become necessary by accident, and not from the neglect or wilful default of the applicant or his agent.

(Signed) CRANWORTH, C.
JOHN ROMILLY, M.R.
A. E. COCKBURN, A.G.
RICHARD BETHELL, S.G.

Dated the 12th of Dec. 1853.

PATENT LAW AMENDMENT ACT, 1852, 16 & 17 VICT. c. 115.

By the Right Honourable Robert Monsey Lord Cranworth, Lord High Chancellor of Great Britain.

Whereas by the Act 16 & 17 Vict. c. 115., the Lord Chancellor is empowered to extend the time for the sealing of Letters Patent for an invention, and for the filing of the Specification thereon, limited to the period of one month after the expiration of the six months of provisional protection of such invention, provided the delay in sealing such Letters Patent and in filing such Specification has arisen from accident, and not from the neglect or wilful default of the applicant.

It is ordered as follows :

Every petition addressed to the Lord Chancellor praying for the extension of time for the sealing of Letters Patent, and for the filing of the Specification thereon under the provisions of the Act of the 16 & 17 Vict. c. 115., and the affidavit accompanying the same, shall be left at the office of the Commissioners of Patents. And in every case where the delay in sealing such Letters Patent and in filing such Specification is alleged to have been caused by adjourned hearings of objections to the grant of such Letters Patent before the Law Officer to whom such objections may have been referred, the petitioner, before leaving his petition as aforesaid, shall obtain the certificate of such Law Officer to the effect that the allegations in respect of such adjourned hearings and causes of delay are, in the opinion of such Law Officer, correct, and that the delay arising from such adjourned hearings has not been occasioned by the neglect or default of the petitioner; and such certificate shall be written at the foot of or shall be annexed to such petition.

CRANWORTH, C.

Dated this 17th day of July 1854.

PATENT LAW AMENDMENT ACT, 1852.

I. In any application for a Patent which is stated to be a communication, the declaration must state the name and address of the party from whom it has been received, in the following manner :—

No. 1. When declaration is made in the United Kingdom —"That it has been communicated to me from abroad by (here insert name and address in full)."

No. 2. In other cases—"That it is a communication from (A.B.) a person resident at (here insert address in full)."

II. All Provisional Specifications must be written on one side only of each sheet.

FITZROY KELLY.
H. M. CAIRNS.

Dated 23rd Feb. 1859.

APPENDIX B.

COPY OF ORDERS vacating ENTRIES made in REGISTER OF PROPRIETORS.

MASTER OF THE ROLLS.

Mr. Latham, Reg. 17. Friday, the 24th day of April, in the 20th year of the reign of Her Majesty Queen Victoria, 1857 :

In the matter of the Patent Law Amendment Act, 1852 :

And in the matter of certain Letters Patent granted to George Green, of Mile End, in the county of Middlesex, bearing date the 1st day of October 1852 :

And in the matter of an assignment of the said Letters Patent, and the entry thereof in the Register of Proprietors of Patents.

Upon motion this day made unto the Right Honourable the Master of the Rolls by counsel for Melvil Wilson, of

Warnford Court, in the city of London, merchant; and Samuel Haven Hamilton, of Warnford Court, aforesaid, merchant; and upon hearing counsel for George Green and William George Nelson Green; and upon reading an affidavit of the said Melvil Wilson and others, filed the 9th day of April 1857, an assignment dated the 27th day of January 1853, an office copy assignment dated the 18th day of August 1855, an affidavit of the said George Green, filed the 23rd day of April 1857, and the exhibits A. B. and C. referred to:—It is ordered that the entry made on the 18th day of August 1855, in the Register of Proprietors at the Great Seal Patent Office, of the assignment of the 18th day of August 1855 from George Green to William George Nelson Green, of certain Letters Patent granted to the said George Green, and bearing date the 1st day of October 1852, be vacated; and it is ordered that the said George Green and William George Nelson Green do pay unto the said Melvil Wilson and Samuel Haven Hamilton their costs of this application to be taxed by the proper Taxing Master of the Court of Chancery.

MASTER OF THE ROLLS.

Mr. Merivale, Reg. Fo. 50. Thursday, the 3rd day of June, in the 21st year of the reign of Her Majesty Queen Victoria, 1858:

Order to vary Register of Proprietors left in the Office 20th Nov. 1853. In the matter of the Patent Law Amendment Act, 1852:

And in the matter of Letters Patent under the Great Seal of the United Kingdom bearing date the 30th day of August, in the 13th year of the Queen, granted to Charles Morey for certain improvements in machinery or apparatus for sewing, embroidering, and writing, or ornamenting by sewing various descriptions of textile fabrics:

And of Letters Patent under the Seal appointed to be used in place of the Great Seal of Scotland, bearing date the 3rd day of December, in the 13th year of the Queen, granted to the said Charles Morey for the said invention.

Upon motion on the eleventh day of January 1858, and this present day, made unto the Right Honourable the Master of the Rolls by Mr. Roundell Palmer and Mr. Aston of counsel for William Mather and Colin Mather; and upon hearing counsel for the Bernard Boot and Patent

Machine Shoe Company (limited) and others; and upon reading an affidavit of Colin Mather, filed the 8th day of January 1858, and the exhibit therein referred; an affidavit of Peter Armand Le Comte de Fontaine Moreau, filed the 23rd day of March 1858; an affidavit of John Henry Johnson, filed the 20th day of January 1858, and the exhibit therein referred to; an affidavit of Julian Bernard, filed the 20th day of January 1858; an affidavit of the said Colin Mather, filed the 21st day of May 1858, and the exhibits therein referred to; an affidavit of James Campbell Rowley, filed the said 21st day of May, and the exhibits therein referred to; and the depositions of the said Colin Mather, filed the 31st day of January 1858; the deposition of the said John Henry Johnson, filed the 8th day of May 1858, and the several exhibits therein referred to:—His Honour doth order that an entry be made in the margin of the Register of Proprietors opposite to the entry in such Register of the deed of the 21st day of February 1853, to the effect that the licence to Mather of Manchester, referred to in such deed, is the deed of the 13th day of January 1851, and the agreement of the 14th day of January 1851, which were on the 5th day of August 1857 entered in full in the Register.

(Copy of Certificate written on the above Order.)

PATENT LAW AMENDMENT ACT, 1852.

I hereby certify that the entry directed by this order was made in the margin of the Register of Proprietors on 20th day of November 1858.

L. EDMUNDS,
Clerk of the Patents.

Lund v. Lund, No. 485.

Upon reading the affidavit of Selby Coryndon, I do order that the assignment of the 20th August last made between Edward Lund and William Lund, and registered at the Great Seal Patent Office on the 30th of August last, be delivered up to William Lund, the assignee, or his solicitor, and the registration thereof be vacated and cancelled.

Dated the 9th day of September 1859.

COLIN BLACKBURN.

PATENT LAW AMENDMENT ACT, 1852.

I hereby certify that the registration of the within-mentioned assignment "Lund to Lund" was vacated and cancelled pursuant to the within order on the 9th September 1859.

L. EDMUNDS,
Clerk of the Patents.

APPENDIX C.

RESULTS of APPLICATIONS for PATENTS under the PATENT LAW AMENDMENT ACT, since 1st October 1852, during each of the under-mentioned years.

	1852. (3 months.)	1853.	1854.	1855.	1856.	1857.	1858.	1859.	1860.	1861.	Totals.
Applications -	1,211	3,045	2,764	2,958	3,106	3,200	3,007	3,000	3,196	3,276	28,763
Ditto with Provisional Specifications	1,178	2,994	2,722	2,900	3,064	3,164	2,956	2,953	3,145	3,228	28,304
Ditto with Complete Specifications	33	51	42	58	42	36	51	47	51	48	459
Ditto for English inventions	1,014	2,439	2,397	2,133	2,565	2,399	2,299	2,455	2,564	2,392	22,657
Ditto for foreign inventions	197	606	367	825	541	801	708	545	632	884	6,106
Provisional protections	1,176	2,972	2,704	2,892	3,052	3,146	2,949	2,940	3,125	3,178	28,134
Notices to proceed	973	2,363	2,050	2,271	2,342	2,294	2,174	2,193	2,318	2,273	21,251
Oppositions entered -	69	131	67	49	61	54	48	43	38	30	590
Hearings of oppositions before Law Officers	65	119	61	48	56	48	44	43	34	28	546
Warrants granted	918	2,190	1,878	2,047	2,097	2,031	1,954	1,979	2,065	2,049	19,208
Warrants refused -	9	23	11	8	12	10	7	2	7	9	98
Oppositions to sealing entered	4	5	2	8	4	3	1	5	2	2	36
References to Law Officers by Lord Chancellor -	1	1	1	1	1	1	—	—	1	1	8
Hearings before Lord Chancellor -	4	3	2	5	2	3	1	3	1	2	26
Patents sealed -	914	2,185	1,876	2,044	2,094	2,028	1,954	1,976	2,061	2,047	19,179
Specifications filed in pursuance of Letters Patent -	865	2,071	1,774	1,938	2,010	1,943	1,878	1,900	1,966	1,969	18,314
Patents void for want of Specifications filed	23	74	66	55	47	52	31	39	47	35	469
Complete Specifications filed with petition on which Patents have been sealed -	26	40	36	51	37	33	45	37	48	43	390
Ditto lapsed by reason of non-sealing of Patent -	7	11	6	7	5	3	6	10	3	5	63
Stamp duties of 50 <i>l.</i> paid before the end of third year -	310	621	513	551	573	584	539				
Patents lapsed at end of third year	581	1,490	1,297	1,438	1,474	1,392	1,394				
Stamp duties of 100 <i>l.</i> paid before the end of the seventh year	102	205	140								
Patents lapsed at end of seventh year -	208	416	373								

APPENDIX D.

CIRCULAR sent in answer to WRITTEN APPLICATIONS for ADVICE.

CIRCULAR.

1. *Mode of Proceeding to obtain English Letters Patent.*—All necessary information under this head will be found in the Patent Law Amendment Acts and Rules, published by order of the Commissioners of Patents (see List of Works, No. 36). Applications for Letters Patent, payments of fees or stamp duties thereon, and oppositions to grants of Letters Patent, must be made at this Office personally or through an agent. Applications by letter cannot be entertained.

2. *Mode of Proceeding to obtain Patents or corresponding Privileges in the British Colonies and in Foreign States.*—The Patent Laws and Regulations of Foreign States and of the British Colonies may be found in the following numbers of the Commissioners of Patents' Journal (see List of Works, No. 35), published at 2d. each, or 3d. free by post:—

Austria, No. 291.	New Zealand, No. 861.
Baden, and Petty States of Germany, No. 325.	Norway, No. 665.
Bavaria, No. 262.	Parma, Piacenza, and Guastalla, No. 321.
Belgium, Nos. 292 and 348.	Poland, No. 335.
Canada, Nos. 279, 625, 856.	Portugal, No. 325.
Cape of Good Hope, No. 727.	Prussia, Nos. 313 and 329.
Ceylon, No. 648.	Queensland, No. 859.
Cuba, No. 498.	Roman States, No. 319.
Dutch West Indies, No. 322.	Russia, Nos. 334 and 508.
France, No. 228.	Sardinia, Nos. 233, 235, 636, 637, 639, and 640.
Germany, No. 435.	Saxony, No. 236.
Greece, No. 325.	Sicilies (the Two), No. 316.
Guiana (British), No. 798.	Spain, No. 323.
Hanover, No. 231.	Sweden, Nos. 327 and 354.
India, Nos. 240, 348, 552, 578.	Tasmania, No. 860.
Jamaica, No. 660.	United States of America, Nos. 638, 646, 753, and 789.
Mexico, No. 496.	Victoria, Nos. 186 and 359.
Netherlands, No. 289.	Wurtemberg, No. 314.
Newfoundland, No. 858.	
New South Wales, No. 386.	

As to Colonial Patents, see also List of Works, Nos. 39 and 40.

3. *List of Applications for Patents and of Patents Granted, &c., at home and abroad.*—These are published twice a week in the Commissioners of Patents' Journal (see List of Works, No. 35), being in all cases official communications.

4. *Advice on Patent Matters, Opinions as to the relative Merit or Novelty of Inventions proposed to be patented, the Infringement or fraudulent Appropriation of Inventions, &c.*—The Commissioners of Patents do not give advice or opinions on any subject connected with the Patent Laws. These, like other laws, are left to the interpretation of professional men. Any solicitor in the country will be enabled, either from his own knowledge or through his London agent, to point out to his client an agent qualified to give advice or obtain Patents, to conduct oppositions to grants of Letters Patent, and to apply for renewals of expiring Patents.

5. *Searches for particular Patents or Classes of Patents.*—The clerks in the Commissioners' Office are not authorized to undertake searches for Patents relating to particular inventions or classes of inventions, or to supply lists of such Patents, as the printing and publication of the subject-matter indexes has now removed every difficulty from the way of inquiry. (See below, paragraph 9.)

6. *Registration of Designs.*—Letters respecting the registration of designs are frequently sent by mistake to the Patent Office. For all information on this subject application should be made to the Registrar, Designs Office, 1, Whitehall, S.W.

7. *Patent Medicines.*—Many medicines are vended under a Government stamp as "Patent Medicines" which have never been the subjects of Letters Patent. Communications with respect to this class of medicines should be addressed to the Secretary, Stamps and Taxes, Inland Revenue Department, Somerset House, W.C.

8. *Allowance of Copies to Persons filing Specifications, &c.*—Although by section 30 of the Patent Law Amendment Act the Commissioners are empowered to allow a number not exceeding 25 copies of any Specification, Disclaimer, or Memorandum of Alteration, to the person filing the same, they have never availed themselves of this power,

believing that the interests of patentees and inventors are better served by the sale of these documents at *cost price*, and by the presentation of copies of *all* their publications to every important town the authorities of which are prepared to accept them on condition of rendering the works daily accessible to the public free of all charges either for inspection or for permission to make extracts or copies.

9. *The Commissioners' Publications.*—These may be consulted daily at the Free Public Library in the Commissioners' Office, 25, Southampton Buildings, Chancery Lane, and at the Free Public Library at the Patent Museum, South Kensington. They are also on sale at the Commissioners' Office. A list of the printed Specifications of Patents (including Surrenders and Disclaimers) enrolled under the old law, with the prices affixed, was published in the Commissioners' Journal, No. 546, for 1859, pp. 359–410 (price 2d.), and from week to week in the same Journal are published similar priced lists of all Specifications filed and printed under the new law. The Commissioners' publications are sold at *cost price*, with the exception of the Abridgments, on which a discount of 25 per cent. is allowed to booksellers. Specifications and other publications will be forwarded by post on receipt of the amount of price and postage. Sums exceeding 5s. must be remitted by Post Office Order, made payable at the Post Office, Holborn, to Mr. Bennet Woodcroft, Great Seal Patent Office. Persons requiring Specifications must send the name of the Patentee, with the No. and date of the Patent. These particulars can be obtained by searching the Indexes of Patents. The price of each Specification is printed at the bottom of the blue cover, in the left-hand corner. To render the Commissioners' publications (now numbering upwards of 1,500 volumes) as extensively available as possible, copies have been presented to the authorities of every important town in the kingdom, on condition, as before stated, that the works shall be rendered daily accessible to the public, for reference or for copying, *free of all charge*. The following list shows the place of deposit, so far as ascertained, of each set of the works thus presented:—

Aberdeen (Public Library, Town House).
Accrington (Mechanics' Institution, Bank Street).
Belfast (Queen's College).
Beverley (Guildhall).
Birmingham (Birmingham and Midland Institute, Cannon Street).
Bolton-le-Moors (Public Library, Exchange Buildings).
Blackburn (Town Hall).
Bradford, Yorkshire (Borough Accountant's Office, Corporation Buildings, Swain Street).
Brighton (Town Hall).
Bristol (City Library, King Street).
Burnley (Office of the Burnley Improvement Commissioners).
Bury.
Cambridge (Free Library, Jesus Lane).
Canterbury (Municipal Museum, Guildhall Street).
Carlisle (Public Free Library, Police Office).
Chester (Town Hall, Northgate Street).
Cork (Royal Cork Institution, Nelson Place).
Crewe (Railway Station).
Darlington (Mechanics' Institute, Skinnergate).
Dorchester.
Drogheda.
Dublin (Royal Dublin Society, Kildare Street).
Dundalk (Free Library).
Falmouth (Public Library, Church Street).
Gateshead (Mechanics' Institute).
Gorton (Railway Station).
Glasgow (Stirling's Library, Miller Street).
Grimsby, Great (Mechanics' Institution, Victoria Street).
Halifax.
Hanley, Staffordshire Potteries (Town Hall).
Hartlepool, West (Literary and Mechanics' Institution, Church Street).
Hertford (Free Public Library, Town Hall).
Huddersfield (Improvement Commissioners' Offices, South Parade).
Hull (Mechanics' Institute, George Street).
Ipswich (Museum Library, Museum Street).
Keighley (Mechanics' Institute, North Street).
Kidderminster (Public Free Library, Public Buildings, Vicar Street).
King's Lynn, Norfolk (Stanley Library, Athenæum).
Lancaster (Mechanics' Institute, Market Street).
Leamington Priors (Public Library, Town Hall).
Leeds (Town Clerk's Office, Town Hall).
Leicester (Corporation Library, Town Hall).
Limerick (Town Hall).
Liverpool (Free Public Library, Duke Street).

London (British Museum).
 — (Society of Arts, John Street, Adelphi).
 Macclesfield (Useful Knowledge Society).
 Maidstone (Free Library).
 Manchester (Free Library, Camp Field).
 Montrose (Free Library).
 Newark, Nottingham (Mechanics' Institute, Middle Gate).
 Newcastle-upon-Tyne (Literary and Philosophical Society).
 Newport, Monmouth (Commercial Room, Town Hall).
 Northampton.
 Norwich (Free Library, St. John's, Maddermarket).
 Nottingham (Corporation Rooms, St. Peter's Church Side).
 Oldham (Town Hall).
 Oxford (Public Free Library, Town Hall).
 Paisley (Government School of Design, Gilmour Street).
 Plymouth (Mechanics' Institute, Princess Square).
 Preston, Lancashire (Dr. Shepherd's Library, the Institution, Avenham).
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 Rochdale (Commissioners' Rooms, Smith Street).
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LIST OF WORKS printed by order of the Commissioners of Patents for Inventions, and sold at the Great Seal Patent Office, 25, Southampton Buildings, Chancery Lane, London.

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4. Reference Index of Patents of Invention, pointing out the office in which each enrolled Specification of a Patent may be consulted; the books in which Specifications, Law Proceedings, and other subjects connected with Inventions have been noticed; also such of the Specifications of Patents granted since the 14th James I. as have been published by the authority of the Commissioners. 1 vol. (681 pages). London, 1855. Price 30s. By Post, 32s. 2d.
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36. The Patent Law Amendment Acts (15 & 16 Vict. cap. 83; 16 Vict. cap. 5; and 16 & 17 Vict. cap. 115); together with the Rules and Regulations issued by the Commissioners of Patents for Inventions, and by the Lord Chancellor and the Master of the Rolls, under the Acts 15 & 16 Vict. c. 83, and 16 & 17 Vict. c. 115, accompanied by Specimen Forms of the provisional documents printed on sheets of the prescribed size. Price 6d. By Post, 7d.
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41. Catalogue of the Library of the Great Seal Patent Office. Two vols. imp. 8vo. (Vol. I. Titles; Vol. II. Index.) Price 21s. By Post, 22s. 8d.

42. Descriptive Catalogue of the Machines, Models, Portraits, &c., in the Museum of the Commissioners of Patents at South Kensington. Third edition. 1859. Price 1s. By Post, 1s. 4d.

PATENT MUSEUM, SOUTH KENSINGTON.

This Museum is open to the Public daily, free of charge. The hours of admission are, on Mondays, Tuesdays, and Saturdays, from 10 A.M. till 10 P.M., and on Wednesdays, Thursdays, and Fridays, from 10 A.M. till 5 P.M.

If any Patentee should be desirous of exhibiting a model of his invention in London, he may avail himself of this Museum, which has been visited, since its opening on the 22nd June 1857, by more than 600,000 persons. The model will be received either as a gift or loan; if deposited as a loan, it will be returned on demand. Before sending a model, it is requested that the size and description of it shall first be given to the Superintendent of the Patent Museum.

Gallery of Portraits of Inventors, Discoverers, and Introducers of useful Arts.—This Collection, formed by Mr. Woodcroft, and first opened to public view in the Great Seal Patent Office in 1853, is now exhibited in the Patent Museum at South Kensington.

Presentations or loans of Portraits, Medallions, Busts, and Statues, in augmentation of the Collection, are solicited. They will be duly acknowledged in the Commissioners of Patents' Journal, and included in the next edition of the Catalogue.

All communications relating to the Specification Department, or to the Museum and Portrait Gallery, to be addressed to B. Woodcroft, Superintendent of Specifications and of the Patent Museum, Great Seal Patent Office, 25, Southampton Buildings, Chancery Lane, London, W.C.

APPENDIX E.

PATENT LAW AMENDMENT ACT, 1852.

REPORT of the Commissioners of Patents to the Lords Commissioners of Her Majesty's Treasury on the subject of Building a Patent Office, Library, and Museum.

To the Lords Commissioners of Her Majesty's Treasury.

The Right Honourable Richard Lord Westbury, Lord High Chancellor of Great Britain, the Right Honourable Sir John Romilly, Master of the Rolls, Sir William Atherton, Her Majesty's Attorney General, and Sir Roundell Palmer, Her Majesty's Solicitor General, being four of the Commissioners of Patents for Invention under the said Act, have to present the following Report to your Lordships:—

In April 1858, Lord Chelmsford, Lord High Chancellor of Great Britain, Sir John Romilly, Master of the Rolls, Sir FitzRoy Kelly, Attorney General, and Sir Hugh McCalmont Cairns, Solicitor General, being four of the Commissioners of Patents for Invention under the said Act, reported to your Lordships in the words following:—

"The 4th section of the Patent Law Amendment Act, 1852, enacts that 'it shall be lawful for the Commissioners of Her Majesty's Treasury to provide and appoint from time to time proper places or buildings for an office or offices for the purposes of the said Act.'

"In pursuance of the requisition of the Lords Commissioners of Her Majesty's Treasury, dated in 1853, the Commissioners of Her Majesty's Board of Works provided certain offices for the Commissioners of Patents, being the ground-floor rooms of the Masters' offices in Southampton Buildings, Chancery Lane, theretofore occupied by Masters in Chancery, abolished under the Act 15 & 16 Vict. c. 80; and an annual rent of 490*l.* is now paid out of the Fee Fund of the Patent Office to the Suitors' Fund of the Court of Chancery for the hire of the same.

"This arrangement was not considered to be permanent; no lease has been granted, and as these offices are now required for the occupation of the registrars and other officers of the Court of Chancery, due notice has been given to the Commissioners of Patents, requiring them to give up possession so soon as other suitable offices can be procured.

"These offices were in 1853 sufficient in number and accommodation for the ordinary business of the office.

"In the year 1855 the Commissioners of Patents established a free public library within their office, containing works of science in all languages, the publications made by the Commissioners, and the works upon patented and other inventions published in the British Colonies and in Foreign countries.

"This library has greatly increased and continues to increase, partly by purchases, but in a great measure by gifts of valuable and useful books. It was resorted to at the first opening by inventors, engineers, and mechanics, as well as by barristers, solicitors, and agents engaged in Patent business; it has become a collection of great interest and importance, and the number of readers has so much increased that at this time convenient standing room cannot be found in the two small rooms within the office which can be appropriated to the library. It is the only library within the United Kingdom in which the public have access not only to the Records of the Patents and Inventions of this country, but also to official and other documents relating to Inventions in Foreign countries, and this without payment of any fee.

"A largely increased accommodation is urgently required.

"No suitable building can be found in the immediate neighbourhood of Southampton Buildings, either to be rented or for purchase.

"The new offices to be provided must be fire-proof, for the preservation of the original Specifications and other Records of the office; the offices now occupied are fire-proof throughout.

"The Commissioners of Patents are in possession of a collection of very valuable and interesting models of patented machines and implements, as also of portraits of inventors, many of them gifts, and others lent by the owners for exhibition. They are now exhibited daily, and gratuitously, in a small portion of the Museum at Kensington, assigned to the Commissioners of Patents for that purpose by the Lords of the Committee of Privy Council for Trade.

"A museum of this nature necessarily increases, and the number of models now exhibited may be considered as forming only the foundation of a great national museum.

"The great work of printing the old Specifications of Patents, with the drawings attached thereto, inrolled in Chancery under the old law, dating from 1623 to 1852, and 12,977 in number, was commenced in 1853, and completed

1858. All have been fully indexed in series and subjects, and the indexes printed and published. These prints of Specifications form about 900 volumes (450 imperial octavo volumes of drawings, and the like number of imperial octavo volumes of letter press). The indexes form seven imperial octavo volumes.

"These valuable works have cost, in transcribing, printing, lithographic drawing, and paper, upwards of 90,000*l*.

"Notwithstanding this great outlay, the balance sheet of income and expenditure for the year 1857, prepared for the annual Report of the Commissioners, and laid before Parliament, shows a surplus income from the commencement of the Act, 1st October 1852, to the end of 1857, of 6,000*l*.

"The balance sheet of Income and Expenditure for the year 1858 will, no doubt, increase the total surplus to 12,000*l*. or 13,000*l*.

"The work of printing the old Specifications being completed, as above stated, the expenditure on that head ceases altogether, and consequently the surplus income of the year 1859 is estimated at 31,000*l*.; adding this sum to the available surplus of 12,000*l*., as above stated, and allowing a margin of 3,000*l*., 40,000*l*. may be safely estimated as the sum available for building purposes at the end of the year 1859.

"The Act of 1853 (16 Vict. c. 5.) converted all the fees imposed by the Act of 1852 into Stamp duties, thereby passing the whole income of the office to the Consolidated Fund.

"The expenditure of the office is estimated and voted annually by Parliament."

"There is no appearance of diminution in the number of applications for Patents, and they may be safely estimated to continue for future years at 3,000 in each year.*

"This number will produce 95,000*l*. in Stamp duties, and adding thereto 1,600*l*. for the average annual proceeds of sales of printed Specifications, the future annual gross income may be taken at 96,600*l*. The gross income is, however, liable to a deduction of 18,500*l*. on account of Revenue Stamp duties, leaving the real available future income of the Patent Office at 78,100*l*.† per annum or thereabouts.

"The Patent Law Amendment Act, 1852, (15 & 16 Vict. c. 83.) imposed certain Revenue Stamp duties upon Patents. These duties have hitherto produced 15,300*l*. per annum, and that sum has been charged against the office in the annual balance sheet of Income and Expenditure.

"These duties are estimated for future years to produce 18,500*l*.‡ or thereabouts.

"The work of printing the old Specifications being completed as above stated, the yearly future cost of the current Specifications, Abstracts of Specifications, journals, indexes, &c., in letter-press printing, lithographic printing, and paper, will not exceed § 17,500*l*. per annum, as contrasted with the average yearly expenditure on those three heads of 39,375*l*. within the years 1856-7-8.

"The Commissioners of Patents are of opinion that it is not expedient to propose to Parliament a reduction of the scale of Stamp Duty fees imposed by the Act of 1852.

"They are of opinion that the fees paid upon the passing of a Patent are not too heavy; the large number of applications (3,000 in each year) accounting for the large amount of income. Any material reduction in the amount of fees would undoubtedly tend to increase the number of useless and speculative Patents; in many instances taken merely for advertising purposes.

"The fee Stamp duties and the Revenue Stamp duties are as follows :

	Fee Stamp Duties.	Revenue Stamp Duties.
	£ s. d.	£ s. d.
Within the first six months from the petition for provisional protection to the filing of the Specification -	20 0 0	5 0 0
On the Patent at the expiration of the third year -	40 0 0	10 0 0
On the Patent at the expiration of the seventh year -	80 0 0	20 0 0
(The Patent is granted for fourteen years.)		

* The number of applications in 1861 was 3,276.

† The available income of the Patent Office amounted in 1860 to 92,000*l*.

‡ The Revenue Stamp Duties produced 18,485*l*. in 1861.

§ The cost of printing, lithographic drawings, paper, books, and binding, for the year 1861, amounted to 18,800*l*.

"There are 3,000 petitions for provisional protection presented in each year, or thereabouts. Of this number, 1,950 reach the Patent, and 550 Patents pay the 50*l*. additional Stamp duty required at the expiration of the third year; 1,450 Patents, or nearly three fourths of the whole, thereby becoming void. Probably not more than 100 of the surviving 550 will pay the 100*l*. additional Stamp duty required at the end of the seventh year.*

"Considering the beneficial results of the additional payment of 50*l*. in sifting useless Patents, the Commissioners are of opinion that it is not expedient to reduce the amount, and so long as the surplus can be expended for the benefit of patentees and that portion of the community which is principally interested in and connected with the practical application to public purposes of discoveries and improvements in science and art.

"They are of opinion that the surplus income, calculated as before stated, to amount to 30,000*l*. at the end of the current year 1859, and to increase in each succeeding year at the rate of 20,000*l*. per annum, may be beneficially applied in the purchase of ground in a central situation, and in the erection thereon of a sufficiently spacious fire-proof building for the Patent Offices and public free Library attached thereto; and that the surplus fund may also be beneficially applied in the purchase of ground and the erection thereon of a permanent and spacious building for the Patent Office Museum, sufficient ground being taken for the extension of the building from time to time, as may be required.

"This is the more necessary, inasmuch as models of the most interesting and valuable description lie scattered over the kingdom, in many instances constructed at a great expense, for legal and other purposes, for which the owners have no present use, and many of which occupy a space inconvenient to them. These models, or many of them, would, as the Commissioners confidently expect and believe, be presented or intrusted to them for exhibition in such museum, provided the public are allowed free access to it at all reasonable times.

"The Commissioners of Patents therefore request that the Lords Commissioners of Her Majesty's Treasury will be pleased to sanction the application of a sufficient portion of the surplus now derived from the fees paid on Patents for the purpose of accomplishing the objects above mentioned, and that with this view their Lordships will be pleased to give the necessary directions to Her Majesty's Board of Works to obtain a proper site for the proposed new Patent Office and Library, to be selected with the approbation of the Commissioners of Patents and with the sanction of the Lords Commissioners of Her Majesty's Treasury, and also to prepare the necessary plans, elevations, and specifications for this purpose, also to be submitted to the Commissioners of Patents for their approval, and to make contracts for the building of the same when approved.

"If their Lordships consent to these proposals the Commissioners of Patents have to request that a sufficient sum for the purpose, so far as the same may be required for the year 1858-9, may be included in the estimate to be laid before Parliament in the present session for Patent Office expenses."

This Report was, immediately on the receipt thereof by their Lordships, transmitted by them to Her Majesty's Board of Works, with instructions that a convenient site should be provided for the proposed new Offices, Public Library, and Museum, and also that plans and estimates should be prepared for Parliament.

In 1859 the Lords Commissioners of Her Majesty's Treasury and the Chief Commissioner of Her Majesty's Board of Works approved of a site for this purpose, lying at the northern extremity of the gardens of Burlington House; and thereupon plans and estimates were prepared for the new Patent Office and Library, by Messrs. Banks and Barry, the architects appointed by the Board of Works, which were so arranged as to form a portion of one complete design for the appropriation of the whole site of Burlington House and Gardens for various public buildings. This plan was, however, suspended or altogether abandoned on the change of Government in that year (1859), and no other site has been since provided for the Patent Office buildings.

The space required for these buildings may be estimated from the following circumstances;—

It is considered by the Commissioners of Patents to be highly desirable, and indeed necessary, that the Patent

* In 1861, 540 paid the additional duty of 50*l*. and 142 the additional Stamp duty of 100*l*.

Office Museum should be so constituted as to become an historical and educational institution for the benefit and instruction of the skilled workmen employed in the various factories of the kingdom. These persons constitute a class which largely contributes to the surplus fund of the Patent Office in fees paid upon Patents granted for their inventions. Amongst the various things necessary to be done in order to accomplish this object it is considered to be of great importance that machines and exact models of machines, in subjects and series of subjects, showing the progressive steps of improvement in each branch of manufacture, should be exhibited. For example, taking the case of steamboats, in order to show the rise and progress of this invention, it is necessary to exhibit in a series of exact models of machines, or by the machines themselves, each successive invention and improvement in steam propellers, from the first engine on the paddle system that drove a boat of two tons burthen to the powerful machinery of the present day on the screw system in first-rate ships of war; accordingly the present Museum presents a very interesting collection to elucidate this subject. The original small experimental engine that drove the boat of two tons burthen, above referred to, is now in the Museum, and stands the first in the series of propellers and models of propellers; and in order to explain how the existence of such a Museum is the cause of its becoming daily more perfect, it may be useful to state that in this branch the following valuable and interesting original machines and models of machines have lately been added to the Museum, either by the gift of the proprietors or at a very trifling expense:

First. A perfect model of Trevithick's locomotive engine, the first engine that ran upon common roads in 1803.

Secondly. An original stationary and pumping engine made on Newcomen's principle, to which Watt applied his important invention for condensing, by the means of a separate vessel and air pump, the steam that had been used and formerly condensed in the cylinder.

Thirdly. The original fixed engine made by Watt in 1788 for converting rectilinear into circular motion, in order thereby to drive mill work by the use of his invention, known as the sun and planet motion. These two last-mentioned engines drove for many years the machinery used at the Soho works of Messrs. Boulton and Watt, near Birmingham.

Fourthly. The very early original locomotive engine brought from the Wylam Colliery in Durham, the first engine which moved by the contact of smooth wheels on smooth rails. This engine was worked at the colliery nearly 50 years, commencing in 1813.

And fifthly, the original "Rocket" locomotive engine made by George Stephenson and worked at the opening of the Liverpool and Manchester railroad in 1829, which unfortunately was the cause of Mr. Huskisson's death.

These instances are selected from one division of the Museum, and are enumerated for the purpose of pointing out, in the first place, the value of such a Museum in an historical and social as well as in a scientific point of view; and, in the second place, the large space that must necessarily be required for the purpose of their accommodation, in such a manner as to enable those who wish to study them to be able to do so without difficulty or inconvenience. It is also to be borne in mind that the number of the models and machines will increase rapidly year by year, and consequently that a large additional space of ground should be secured for the future extension of the Museum.

The Commissioners are also in possession of a large number of valuable models, which still remain in cases, because room cannot be found for their exhibition in the space assigned to them in the Museum at South Kensington; indeed so limited is that space that they are obliged to postpone the acceptance of many valuable models offered as gifts by manufacturers and inventors. Several good models of machines have also, for the same reason, been lately removed to afford room for machines of a higher degree of interest.

The Public Library at the Patent Office is in the same crowded condition; the books daily increase in number, and many remain in cases, for the reason that shelf room cannot be found for the books, and still less accommodation for the readers.

The inconvenience arising from this source is accurately pointed out in a memorial presented to the Commissioners of Patents on the 22d of July last, and signed by 46 gentlemen, consisting of eminent mechanical engineers, chemists, manufacturers, inventors, and agents, who are readers in the Public Library of the Patent Office. A copy of the memorial, so far as it relates to this subject, is appended to this Report.

In connexion with the erection of the necessary buildings for the objects above specified, a most important consideration is the spot to be selected for that purpose. The readers in the library being of the class of scientific persons, barristers, mechanical engineers, chemists, inventors, skilled workmen in the various factories, solicitors, and patent agents, it is obvious that the readers should be enabled to read the books and examine the machines and models at the same time and in the same place, and, consequently, that the Patent Office, Public Library, and Museum should be either under the same roof or in very close proximity, and also that the spot to be selected should be of easy access to the class of persons above referred to.

The proposed site for the Patent Office buildings in Burlington House Gardens having been abandoned, as above stated, the Commissioners of Patents, in the following year (1860), proposed to your Lordships, Fife House and Gardens in Whitehall, as a convenient site for the Patent Office buildings and Museum, and one that would unite all the necessary requirements already referred to. This proposal was favourably considered, and a minute of the Treasury was transmitted thereon to the Board of Works. It was found, however, that until the question of the embankment of the river and the roads of access to the main river-side road should have been settled by Parliament, no appropriation of that site for building purposes could be made.

This difficulty is now removed. The several roads have been set out and definitely fixed by the Thames Embankment Act of the present session, and it is consequently now open to Her Majesty's Government, if it shall think fit to do so, forthwith to appropriate the site of Fife House for the erection of the proposed Patent Office buildings.

The Crown leases of Fife House and the several buildings adjoining thereto have lately expired, and therefore the whole property is now at the disposal of Her Majesty's Commissioners of Woods and Forests in right of the Crown; and the Commissioners of Patents are informed that the site proposed can be obtained either by purchase or on a Crown building lease.

The plan attached to this Report shows the road of access from Whitehall to the river-side main road, and the site proposed to be taken (the Patent Office Library and Museum marked A. and coloured red); also the land to be reclaimed by the embankment (marked B. and coloured green) proposed to be reserved and appropriated for the extension of the Museum in future years.

The surplus income of the Patent Office, applicable to building purposes, amounts in the aggregate to 129,000*l*. The Commissioners of Patents do not propose to ask your Lordships to apply for building purposes any portion of this sum which has already been received and has formed part of the general revenue of the country, but merely that the surplus income of the present year (1862) and that of succeeding years should be applied for the purposes above enumerated.

The surplus income of the current year (1862) is estimated at 40,000*l*.

The Commissioners of Patents therefore earnestly request that your Lordships will be pleased to sanction the appropriation of the site proposed by them for the Patent Office buildings; that your Lordships will be pleased to give the necessary directions to Her Majesty's Board of Works to obtain the proposed site, either by purchase or by a lease from the Crown, and to direct the architects to prepare the necessary plans, elevations, and estimates; and further, that your Lordships will be pleased to direct such plans, elevations, and estimates to be laid before Parliament at the commencement of the ensuing session; and to apply for a vote for such proportion of the estimated cost of the buildings as may be required for the year 1863-4; and, should it be decided to purchase the land for the site, also to apply to Parliament for the sum of money necessary for that purpose, all such monies to be repaid out of the surplus income for the current and succeeding years.

Dated 7th August 1862.

WESTBURY, C.
JOHN ROMILLY, M.R.
WILLIAM ATHERTON, A.G.
ROUNDELL PALMER, S.G.

APPENDIX.

The Memorial referred to above.

July 22, 1862.

We, whose names are hereunto set, and who include in our numbers many engineers, chemists, manufacturers, and persons who have from time to time obtained Letters Patent for their inventions, most respectfully beg to bring before the notice of the Commissioners of Patents certain grave defects which exist in the Library of the Commissioners, and which defects are increasing from day to day.

The existing and increasing defects, which we beg may be remedied, are—First, and principally, the absence not merely of ordinary accommodation, but literally of standing room. The space, which even at the outset was far too limited, has become, owing to the unavoidable necessary increase from time to time of the books, so contracted, that any careful study of a work is impracticable, on account of the confusion caused by the moving to and fro of visitors who are in vain seeking vacant places. Another defect is the difficulty frequently met with in obtaining a required work; this does not arise from any want of knowledge on the part of the librarian or attendants as to the place where it is to be found, nor to any want of attention, for we are happy to be able to record our sense of the painstaking intelligence and unvarying courtesy of all the officials, who, as far as their limited number will admit, meet every wish of the users of the library; but it arises from the fact that, owing to the want of space, many of the books are of necessity in parcels and piles on the floor, and it is a matter of great loss of time and labour to turn these over to obtain one.

Many of the undersigned, in their capacity of men professionally engaged in engineering and chemistry, and in the improvement and perfecting the processes of manufacture, have frequent occasion to consult scientific works, and to examine into the various improvements which from time to time have been patented, and have been given to the public by their inventors in consideration of the protection afforded to them by their Patents, and have been published to the world in the cheapest and most accessible manner by the admirable provision of the Patent Law of 1852; and we cannot too strongly impress on the Commissioners the advantage of having accumulated in the library a complete collection, not only of these Specifications of British Patents, but also of the journals and abstracts of the Patent Offices of other countries, and of the various English and foreign scientific works.

It is only by having such information as this collected in one place that it becomes really useful, but when so collected, it is the means of informing and instructing the engineer, the chemist, and the manufacturer in matters of great use in their respective callings, and is further frequently the means of preventing men of truly inventive minds from losing their time and money on matters which they honestly believe they have discovered, but which the works contained in such a library prove to them are not new; and also is highly useful in enabling persons successfully to resist demands made on them by those who had obtained Patents for matters which were published to the world prior to the date of such Patents by the very depositing in this library of works containing a description of the things so subsequently improperly patented.

This being the opinion of all and the experience of many of the undersigned, as to the great use of this library, when properly maintained, we most earnestly deprecate any attempt to make the limited space continue to be for a longer time available by a diminution in the number of works which ought to be added to it; and therefore we pray the immediate attention of the Commissioners in this respect.

We do not even pretend to suggest to the Commissioners in what manner they could best accomplish the objects we have in view; but we must be allowed to remark we are sure those objects could be accomplished, not by requiring any pecuniary assistance from Parliament, but by a mere outlay of a portion of the excess of receipts from inventors over and above the current expenses of the office; which excess, we humbly submit, cannot, in justice to the persons who pay it, be properly considered a surplus until from it there have been provided those matters necessary for the interests of the persons who contribute the money; and among these are, we must venture to urge, a building, as an office for Patents, including in it, a complete library, a commodious reading room, and suitable offices for a proper staff of clerks and others to prepare well-digested and numerous abstracts and abridgments of inventions and processes made public, either by the Specifications of Patents or otherwise, and whether English or foreign.

Praying that the Commissioners will take this matter into their serious consideration.

We have the honour to be
Your obedient humble servants,

(Signed) ROBT. WM. KENNARD, M.P.
and forty-five others.

APPENDIX F.

BETTS' PATENT.

STATEMENT of MR. SPARLING, Solicitor to the Plaintiff BETTS, detailing the several Proceedings at LAW and in CHANCERY, with the Costs of all Parties therein. The Costs of the DEFENDANTS are *estimated*.

	Costs.	
	Plaintiffs.	Defendants.
The first dispute about the validity of this Patent was raised by the patentee's brothers and partners, who contended that as he was a partner in the capsule business he could not have a grant of a Patent for an improvement for his own benefit, and asserted their authority to exclude him from any share in the management of the business. In addition to claiming the Patent as partnership property, his partners also resisted the patentee's right, on the ground that goods had been manufactured and sold before the date of the Patent. Two suits in Chancery were instituted; one by the patentee to restrain his partners from infringing and for a dissolution, the other by his partners to restrain him from dissolving the partnership and praying a declaration that the Patent was partnership property. On the hearing before Vice Chancellor Knight Bruce in July 1851, the Vice Chancellor granted the patentee a dissolution, but, before deciding whether the patentee was a trustee for the partnership or not, he directed an action to try its validity.	£	£
This action was brought and notice of trial given for Hilary Term 1852, when counsel on both sides endeavoured to come to an amicable arrangement, but without success, and notice of trial was again given for the sittings after Trinity Term 1852; but an order of reference was ultimately made, both of Chancery suits and action, to Mr. Biggs Andrews. The reference lasted from June 1852 to December 1856, and by way of compromise of the question as to the ownership of the Patent it was arranged that the Patent should be treated as valid, and and that the patentee should pay his partners one-third of the value. The Chancery suit also related to the business of recti-	2,000 -	2,000.
	1,200 -	1,200.

	Costs.	
	Plaintiffs.	Defendants.
fiers and brandy distillers carried on by the patentee and his partners in addition to the capsule business; by the award, the patentee was to retire from the spirit business, and his partners were to retire from the capsule business, and to pay him 1,500<i>l.</i> towards his costs of the Chancery suits. Plaintiff's costs in the Chancery suits amounted to about 2,000<i>l.</i>; the action to about 1,000<i>l.</i>; and the reference to about 2,000<i>l.</i>; and the defendants' costs were about the same. The evidence relied on by the patentee's partners, as to the sale before the Patent, depended principally on the evidence of a clerk, discharged by the patentee and reinstated by his partners, named Menzies. The award was made in December 1856, and Menzies then left the employment of the patentees. Pending this arbitration, patentee filed a bill against a Mr. Barlow to restrain an infringement threatened by a Mr. Wildey, a Belgian manufacturer, through his agent, Mr. Barlow; the suit was against Barlow only, and resulted in Barlow giving an undertaking not to infringe, provided 10<i>l.</i> were paid towards his costs; the costs of this suit were about 100<i>l.</i> In March 1857 the patentee discovered that Menzies, as agent for Wildey, was infringing his Patent, and on the 11th March he filed his bill for an injunction both against Menzies and Wildey, and he applied ex parte to Vice Chancellor Wood, on the 11th March 1857, for an interim injunction against both, and obtained it, with leave to give notice of motion against Menzies for the 13th March. Notice was given, and on the hearing the Vice Chancellor extended the interim injunction until the 21st March, and gave leave to serve Wildey, the co-defendant, in Belgium. On the 21st March 1857, the Vice Chancellor granted an injunction against both until after the trial of an action at law. The plaintiff's costs of these proceedings in Chancery were about 260<i>l.</i> The action was tried before Lord Chief Justice Campbell on the 19th and 20th June 1857, and resulted in a verdict for the plaintiff on all the issues, which were the usual ones; not the true and first inventor—not a new invention—no sufficient grant—no sufficient Specification—not guilty. The costs of this action were about 1,200<i>l.</i> In Michaelmas Term the defendants obtained a rule for a new trial on the ground of misdirection, and also for a nonsuit, or to enter the verdict for defendants, on the ground of an old Specification of Thomas Dobbs, enrolled in 1804. On the argument of the rule, the Court called on the defendants' counsel to meet the argument against that part of the rule which related to entering the verdict for defendants, as they were satisfied that there was a misdirection; the defendants then elected to take a new trial, which was granted on the ground that the question left by Lord Campbell to the jury as the test of novelty was too narrow, namely, whether an ordinary workman, on reading Dobbs' Specification, could at once make Betts' metal. The costs of the rule - - - - - Betts <i>v.</i> Cooper - - - - - „ <i>v.</i> Clifford, 1st action - - - - - „ <i>v.</i> Cooksey - - - - - In November 1857 the plaintiff commenced three actions against parties infringing his Patent in Birmingham; viz., Cooper, Clifford, and Cooksey; and in December 1857 he filed two bills in Chancery against Cooper and Clifford, and moved for an injunction in one suit against Clifford. The injunction was refused, on the ground that negotiations having been pending some time, the injunction would not be granted until the actions were decided. In February 1858 the plaintiff commenced another action against Clifford, tried at the Warwick assizes in March 1858; the jury found a verdict for the defendant as to novelty, and for the plaintiff as to the infringement. In Easter Term the plaintiff obtained a rule nisi for a new trial on the ground of surprise, a witness having come down from the gallery and sworn that he was accidentally in Court and remembered the process described by the plaintiff being carried on in Birmingham 20 years before. On the argument of this rule the Court discharged it, on the ground that it was not technically a surprise, and that on the 2nd trial of Betts <i>v.</i> Menzies the case could be fully investigated. In November 1858 Clifford and Cooper were in a position to move to dismiss the suits in Chancery, when the plaintiff had to pay about 40<i>l.</i> for the defendant's costs of the motions, and his own costs, which were of about the same amount, and give an undertaking to proceed. About the same time the patentee gave notice for the 2nd trial in Betts <i>v.</i> Menzies, but at the sittings after Michaelmas Term it was made a remanet until the sittings after Hilary Term, when the case was tried, and after six days' trial the jury found a verdict for the plaintiff. The	£ 2,000 - 100 - 260 - 1,200 - 350 - - 50 - - 50 - - 50 - - Clifford, 2nd action 1,350 - - 40 - -	£ 2,000. 30. 200. 600. 100. Estimate only. 50. 50. 50. 1,200. Reduced, on taxation, to 412<i>l.</i> 50<i>s.</i> was allowed plaintiff for the issues as to the infringement, and 360<i>l.</i> paid defendants. 40.

	Costs.	
	Plaintiffs.	Defendants.
witnesses actually called were 54 for the plaintiff and 21 for defendants, but nearly as many more were in attendance. After this a summons was taken out by the plaintiff, in the Chancery suits of <i>Betts v. Clifford</i> and <i>Betts v. Cooper</i> , to enlarge publication until the judgment could be obtained in <i>Betts v. Menzies</i> ; before the hearing of this summons the defendants' solicitors suggested a compromise, and a negotiation was entered into for that purpose; pending that negotiation the defendants in <i>Betts v. Menzies</i> obtained a rule for a new trial, or a nonsuit, on the ground of <i>Dobbs' Specification</i> ; on the argument of this rule the Court of Queen's Bench unanimously ordered the verdict for the plaintiff to be set aside, and a verdict entered for the defendants. After this the defendants in <i>Betts v. Cooper</i> and <i>Betts v. Clifford</i> set down the causes in Chancery.	£ 2,850 - -	£ 1,800.
The costs of this rule included in the 2,850 <i>l.</i>		
The defendant <i>Wildey</i> having committed a breach of the injunction, the plaintiff moved to commit him. The plaintiff's costs were 147 <i>l.</i> Defendant was ordered to pay them, and they were taxed at 92 <i>l.</i> between party and party.	147 - -	100.
The plaintiff in <i>Betts v. Menzies</i> gave notice of appeal to the Exchequer Chamber.		
The defendants in <i>Betts v. Menzies</i> in Chancery moved to dissolve the injunction, and the costs of this motion were about 100 <i>l.</i> each side. The Vice Chancellor ordered the motion to stand over until after the appeal to the Exchequer Chamber.	100 - -	160.
Pending the appeal to the Exchequer Chamber, the causes of <i>Betts v. Clifford</i> and <i>Betts v. Cooper</i> came on in Chancery, and the Court dismissed <i>Betts v. Clifford</i> with costs, but without prejudice to filing a new bill, and ordered <i>Betts v. Cooper</i> to stand over.	<i>Betts v. Clifford</i> , 400 - - <i>Betts v. Cooper</i> , 170 - -	300. Clifford's costs taxed at 250 <i>l.</i> as between party and party. 100.
The defendants in <i>Betts v. Menzies</i> taxed their costs in the Queen's Bench at about 700 <i>l.</i> , and the costs of the issues found for the plaintiff was taken at 100 <i>l.</i> merely for the purpose of ascertaining the amount for which the plaintiff should give security. The plaintiff moved for and obtained a rule to review the Master's taxation, on the ground that he had erroneously allowed the defendants the costs of witnesses. On the return of this rule, it was arranged that it should stand over until after the appeal.	50 - -	30.
The Court of Exchequer Chamber gave judgment in June 1860, when five Judges were in favour of affirming, and two for reversing the judgment of the Queen's Bench.	700 - -	100.
The plaintiff immediately gave notice of appeal to the House of Lords.		
The defendants moved in Chancery to dissolve the injunction. The Vice Chancellor dissolved the injunction, but ordered the costs to be costs in the cause, and the hearing of the cause to stand over until the decision of the House of Lords.	90	£90. The same observation as to the preceding trial must be here made to account for the great difference between the defendants' costs and the plaintiff's. The defendants' solicitors were unwilling to increase their liability, and I believe, out of consideration for their position, that counsel accepted much lower fees than they would otherwise have done; they had already expended large sums for the defendants, which the defendants were unable to pay.
The defendants in the Common Law actions, <i>Betts v. Cooksey</i> , <i>Betts v. Cooper</i> , and <i>Betts v. Clifford</i> , gave the plaintiff notice to bring on the issues for trial. The plaintiff then took out a summons to postpone the trials until the decision of the House of Lords. The Judge ordered the trials to stand over until the decision, unless the defendants would abandon the points under argument as a defence; this the defendants declined to do. The case was argued in the House of Lords in July 1861. The Judges have delivered their opinion, but the House has not yet pronounced judgment.	10, <i>Cooper</i> 10, <i>Clifford</i> 10, <i>Cooksey</i> -	10, <i>Cooper</i> . 10, <i>Clifford</i> . 10, <i>Cooksey</i> .
<i>Betts v. Menzies</i> , House of Lords - - -	1,300 - -	200.*
£	14,487 - -	10,370

BETTS' PATENT.

Total costs of plaintiffs in the various suits	- - -	£14,487
Ditto of defendants	- - -	10,370
		<u>£24,857</u>

* In the House of Lords the plaintiff had to pay the expense of printing (210*l.*), half of which ought to have been paid by defendant.

(3).—APPENDIX to the EVIDENCE of MR. GROVE.

ANALYSIS of and OBSERVATIONS on the LAW of FRANCE. Paper by W. R. GROVE, Esq., Q.C.

Letters Patent in France are regulated by the law or Statute of the 5th of July 1844. This Act contains provisions for the granting and duration of Patents, the payments to be made to the State for them, the manner of enforcing Patent rights, and the annulling of bad Patents. Its principal enactments are as follows:—

Patents may be granted for any new invention or discovery by which a new industrial product (*produit industriel*) is obtained, or which, by the invention of new means, or the new application of known means, produces a *result* in an industrial product. (Arts. 1, 2.)

From this enactment medicines and *financial combinations* are specially excepted. (Art. 3.)

Patents may be granted for five, ten, or fifteen years, and the tax to be paid for them is 500, 1,000, and 1,500 francs, according to the duration of the Patent. This tax is to be paid yearly in sums of 100 francs. If a year passes without payment the Patent lapses. (Art. 4.)

In order to obtain a Patent the inventor must send to the prefecture of his department his application, addressed to the Minister of Agriculture and Commerce, together with a full description of his invention, and such drawings or *samples* as may be necessary for understanding the description.

A duplicate of the description and drawings is to be sent.

The duration of the Patent dates from the delivery of the application, &c.

The applications, &c. are sent from the prefecture to the Ministry of Agriculture and Commerce, where they are registered, and from whence the Patent is sent to the inventor. (Arts. 5, 6, 7, 8, 9, 10.)

The Patents are delivered without any preliminary examination, at the inventor's risk, and without guarantee of any kind on the part of the Government, either of the novelty or merit of the invention or of the correctness of the description. (Art. 11.)

All Patents granted will be officially announced in the "Bulletin des Lois" every three months. (Art. 14.)

Patents can only be prolonged by a Statute. (Art. 15.)

A patentee or his assignee may take out a "certificate of addition" for any improvement on his invention which will give him Patent rights for the improvements during the duration of the original Patent. For this certificate he pays 20 francs. (Art. 16.)

He may, if he thinks fit, take out instead an independent Patent for such improvement, and has the exclusive privilege of taking out such independent Patent or certificate of addition during one year from the granting of the original Patent. Any person desiring a Patent for an improvement on another's Patent during the first year of that Patent's currency must send in an account of his invention sealed up; at the end of the year the document will be opened and the Patent sent, the original patentee having in all cases the preference. (Arts. 17, 18.)

The patentee of an improvement on a patented invention cannot use the original invention without permission, nor can the holder of the first Patent use the improvement without permission. (Art. 19.)

A Patent may be assigned in whole or in part. The assignment must be registered at the prefecture, whence a notification is sent to the Ministry, where it is also registered.

The assignee may profit by any "certificates of addition" subsequently granted to the patentee, and the patentee, if he retains any share in the Patent, may profit by "certificates of addition" granted to the assignee.

The whole of the tax must be paid on assignment.

The descriptions, &c. of the invention are to remain until the expiration of the Patent at the Ministry, where information regarding them will be given free of cost to any one seeking it.

Any person may obtain, on paying for it, a copy of such description, &c. (Art. 23.)

After the payment of the second year's tax the descriptions, &c. are to be published, either in whole or in part, and there is also to be published at the commencement of each year a catalogue of the Patents delivered during the preceding year. One of these catalogues is to be kept at the Ministry and one at each Prefecture. After the expiration of the Patent the original descriptions are to be deposited at the "Conservatoire des Arts et Metiers." (Arts. 24, 25, 26.)

Patents may be granted in France to foreigners, and may be granted for *inventions already patented abroad*, but in such cases the Patent granted in France only lasts as long as the original Patent. (Art. 27, 28, 29.)

Patents are void, if the alleged invention is not new, if it comes within the terms of Art. 3 as unpatentable, if it relates to a theoretical principle or discovery without indicating a practical application, if the object of the invention is opposed to public policy, if the patentee has *fraudulently* given a wrong title to his Patent, or if the description is insufficient.

A Patent taken out in contravention of the Article giving the original patentee a year's privilege, is also void.

Certificates of addition for matters not really relating to the principal invention are also void. (Art. 30.)

No invention is to be held new which has, either in France or abroad, been before the application for the Patent sufficiently known to *enable* people to use it.

A patentee loses his right if he does not pay his tax, or if he has not, within *two years from the granting of the Patent, got his invention into use* (*mis en exploitation sa decouverte*), or if he has ceased to work (exploiter) it during two consecutive years, unless he can in either case bring forward good reasons for his inaction. (Art. 32.)

In all mentions of the Patent in advertisements, &c., the patentee must insert the words "sans garantie du Gouvernement," under penalty of a fine of from 50 to 1,000 francs. (Art. 33.)

An action for avoiding or annulling a Patent may be brought by any person interested in the matter. The law officer of the Government may, if he thinks fit, make himself a party to the suit, or bring an action himself in some cases.

Any inroad upon the patentee's rights, either by manufacturing the patented article or using the patented machinery, constitutes an infringement of the Patent. This infringement is punishable by a fine of from 100 to 2,000 francs. (Art. 40.)

Persons who knowingly sell, or expose for sale, or introduce into French territory patented articles are liable to the penalties for infringement.

The penalties are not cumulative. (Arts. 40, 41, 42.)

Where judgment for infringement is pronounced against a person who has been convicted of an infringement of the same Patent within five years previous to the date of such judgment, he may be punished by imprisonment of from one to six months. The same punishment may be pronounced against a workman of the patentee who infringes the Patent, or against a third person combining with such workman. (Art. 43.)

These proceedings are to be regulated by Art. 43 of the penal code. (Art. 44.)

The authorities can only take proceedings for the infringement of Patent rights on the complaint of the person injured. (Art. 45.)

(N. B. I gather from the language of the Statute that the only mode of vindicating Patent rights is by a penal proceeding carried on in the name of the State.)

The tribunal, (called in the Statute the "Tribunal Correctionnel," in deciding on these cases is to consider all objections brought forward by the defendant either to the validity of the Patent or the ownership of the plaintiff. (Art. 46.)

Inspection may be granted, and if necessary, seizure made of the articles the manufacture or using of which constitutes the alleged infringement. Where there is a seizure, the plaintiff may, if necessary, be required to give security (cautionnement), which is always to be required from a foreign plaintiff demanding a seizure. (Art. 47.)

Articles made and machinery used in violation of patent rights are to be confiscated without prejudice to the right of the plaintiff to damages. (Art. 49.)

(N.B. This is the only mention of damages. I am unable to gather from the preceding sections of the Statute what power the plaintiff has of recovering damages.)

In a circular dated the 20th December 1854, and addressed by the Minister of Agriculture and Commerce to the Chambers of Commerce and to the Consulting Chamber (Chambres Consultatives) of Arts and Manufactures, the minister states that the law of July 1844 is stated to be defective in certain respects, and that some changes in it are proposed; these he enumerates, the principal ones are as follows:—

1. The propriety of excluding medical preparations from the privileges of Patents is questionable, on general grounds, and also because the rule tends to violate the principle of “sans examen préalable,” as the Government has to examine inventions submitted to it, in order to ascertain whether they come within the prohibited class.

The exclusion of financial operations seems superfluous, and also objectionable on the same grounds as the last.

2. The amount payable for Patents has been considered by some as too great, and the duration of Patents too short.

3. The division of Patents into 5, 10 and 15 years is superfluous, inasmuch from the manner of paying the tax on them, the patentee can determine his Patent in any year.

4. It is suggested that there is no use in obliging inventors to furnish *samples* of their manufactures.

5. The Article (18) giving the patentee advantages in taking out certificates of addition on Patents for improvements on his invention during the first year of his invention, has been found to work injuriously in some respects. The Article 23 giving everybody a right of obtaining copies of the descriptions, &c. of the invention immediately after the granting of the Patents, has been found to produce evil in some respects, as in some cases foreign Patents in imitation of the French one are immediately taken out. To obviate this it is proposed that the descriptions, &c., should not be communicated to the public until six months after the granting of the Patent.

6. Article 20 makes it necessary when the Patent is assigned to pay the whole of the tax; it is proposed to abrogate this provision.

7. Patents of which the second year's tax has been paid, are inserted in full in the official catalogue under Article 24. The publication costs a considerable sum of money; it is proposed that important Patents only should be placed in it.

8. Article 31, which declares that no invention which before the date of the Patent has been known shall be considered new, is complained of as too vague and general.

9. Article 34, rendering the Patent void in case of failure to pay the tax, is complained of as not clearly stating whether, under these circumstances, a Patent becomes void or merely voidable. It is proposed to give the Administration the power of declaring a Patent void under these circumstances.

10. It is proposed to substitute for the words “sans garantie de Gouvernement” simply “sans examen.”

11. It being a matter of considerable difficulty for ordinary tribunals to decide on Patent cases, owing to the peculiar nature of the questions raised, it has been proposed to create at Paris a jury of experts

(juré special), analogous to ten “conseils de prud'hommes” in commercial cases, to adjudicate in these cases.

On all these questions the Minister requests the advice of the Chambers of Commerce, &c.

To this circular the Society for the Encouragement of National Industry returns a set of answers and observations, the most important of which are as follows:—

They propose that the duration of Patents should be extended from 15 to 20 years, and that the Government by a legislative enactment should be able, as it is in England, to grant extensions in some cases.

That there should be constituted in each of the principal industrial towns of France, Paris, Lyons, Rouen, Lille, Mulhouse, &c., a “tribunal consulaire industriel” for the trial of Patent cases. This tribunal would be in some respects analogous to the “Tribunaux de Commerce” existing in France, and would be divided into three Chambers, which would consist respectively of men acquainted with chemical science, with the mechanical arts, and of manufacturers of woven fabrics. To one of these Chambers all Patent cases would be sent for decision.

The law of Patents in France would seem to differ from ours in the following particulars:—

1. The Patent is granted on the mere demand of the inventor, without any preliminary examination, and it is expressly stated in the Act that the Government in no way guarantees the merit or novelty of the invention or the fidelity of the Specification (description). (Art. 11.)

In order the more fully to carry out this principle, the patentee is obliged, in all advertisements, &c., of his Patent, to insert the words “sans garantie du Gouvernement.”

The circular of the Minister, however, contains a proposal to change this form of words into “sans examen,” as the former words had led to mistakes on the part of the public, and it has been found impossible to carry on in practice this provision of the Act. (P. 20.)

2. The inventor or his assignees have the exclusive right of taking out certificates of addition for improvements in the invention for which they hold a Patent. These certificates of addition cost only 20 francs, but they expire with the original Patent. (Art. 16.)

If, on the other hand, the holder of the Patent chooses to take out an independent Patent for the improvement, or a certificate of addition, he has the exclusive right of doing so during the first year of the Patent's duration. (Art. 18.)

This provision is pointed out by the minister as in some respects objectionable. (P. 17, 18.)

3. The tax or duty payable on Patents is virtually 100 francs a year, payable yearly during the currency of the Patent. Failure to pay this in any year invalidates the Patent. (Art. 4; and see the observations of the minister, p. 16.)

4. The duration of Patents can only be extended by an Act. (Art. 15.) The Society for Encouragement of National Industry proposes in its report a system of extension to resemble the English one.

5. The Act contains a provision that no Patent can be granted for an invention already known in France or abroad. (Art. 31.) There is however a statement that a Patent may be taken out for an invention already patented abroad. (Art. 29.)

6. The Act contains a provision that a Patent shall lapse if the patentee does not put his invention into use within two years from the date of the Patent, or if he ceases to work (exploiter) it for two consecutive years. (Art. 32.) Neither the Minister nor the Society make any observations on this section, which has, I presume, become practically inoperative.

7. Actions to vindicate Patent rights would seem to be quasi penal proceedings, prosecuted before the “Tribunal Correctionnel.” (Art. 40 to 49.)

(3.)—APPENDIX to the EVIDENCE of MR. CLODE.

Paper A.

MEMORANDUM.

The embarrassments arising in the department of the Secretary of State for War from the present terms of the grant of Patents for instruments or munitions of war, form the subject of this Memorandum.

It is scarcely necessary to premise that the defence of the realm is the paramount duty of the Crown, and one that it cannot relinquish. "I confess," said Sir Richard Hutton in Hampden's case, "there are some inseparable prerogatives belonging to the Crown such as the Parliament cannot sever from it, and I will prove to you out of the bookcases and statutes that the king cannot release his tenure *in capite*. It was endeavoured that a law should be made that the Court of Wards should be shut up; it was resolved it had been a void law. Such is the care for the defence of the kingdom which belongeth inseparably to the Crown as head and supreme protector of the kingdom, so that if an Act of Parliament should enact that he should not defend the kingdom, or that the king should have no aid from his subjects to defend the kingdom, these acts would not bind, because they would be against natural reason."

Many articles are patented that can only be useful for the purpose of national defence or destruction.

Take for the first illustration Palmer and Nugent's multiple gun, by which 500 charges can, it is said, be thrown against a regiment in a few seconds; and for the second, any Patent for armour plates to war steamers or fortresses.

The Patents for the multiple guns are granted to aliens, and the Crown is entirely in their hands as to a supply which, when ordered, is to be sent from America.

As a rule all instruments and munitions of war are now made in the royal arsenals and factories, to save cost and secure quality.

The policy of the Crown becoming a manufacturer of instruments and munitions of war, receives by annual votes the explicit sanction of Parliament.

The Ordnance Select Committee have been very frequently impeded in the prosecution of inquiries tending to the greater efficiency of Her Majesty's forces by real or pretended legal right of Patentees.

To quote recent examples:—

Messrs. Brown and Webb claimed the exclusive right to employ gunpowder in a compressed state.

Mr. Lancaster claimed the exclusive right to fire rockets under water.

The Whitworth Ordnance Company claimed the exclusive right to make projectiles with flat fronts.

Mr. Ramsar claimed compensation for the supposed adoption by the Royal Carriage Department of means of checking the recoil of guns by elastic springs or buffers.

Mr. McKay, who has patented a great variety of unusual forms of shot, recently threatened the Committee with legal consequences if any of them were tried without his concurrence.

Captain Blakeley attempted to interfere in the manufacture of Armstrong guns as an infringement of his Patent.

Messrs. Church and Goddard made a similar attempt on other grounds; and speaking generally, the Committee remark it may be asserted, "that it is scarcely possible to propose a new arrangement of breech-loading, or new mode of rifling, or a new description of projectile, which shall avoid known defects and embrace known excellencies, without finding some of the details anticipated by Patentees and claimed as private property, although they are only component parts of a system to which, as a whole, none of these Patentees can lay claim."

"The foregoing examples, which might probably be extended by referring to records of earlier date, will suffice to show that, if Her Majesty's service is not seriously obstructed by the facility with which Patents are at present granted for warlike inventions, which the Crown alone can, for the most part, make use of, it is not for want of intention on the part of Patentees to enforce their rights; but from other causes, the first of which is the worthlessness of the great majority of the so-called inventions patented, and the second the small proportion which really new discoveries or appliances bear to those which are only supposed to be new by ignorant or interested parties, but on examination turn out not to be so. These conditions are no security that serious inconvenience may not some day accrue."

At present the only protection against the abuse of monopoly inserted in the Patent is the following proviso: "And also that if the said [Patentee], his executors, administrators, or assigns, shall not supply, or cause to be supplied for our service all such articles of the said invention

"as he or they shall be required to supply by the officers or Commissioners administering the department of our service for the use of which the same shall be required in such manner, at such times, and at and upon such reasonable prices and terms as shall be settled for that purpose by the said officers or Commissioners so requiring the same; then, and in any of the said cases, these our Letters Patent, and all liberties and advantages whatsoever hereby granted, shall utterly cease, determine, and become void, anything herein-before contained to the contrary thereof in anywise notwithstanding."

Under this proviso, the Crown by *sci. fa.* may (it is assumed) annul the Patent if the Secretary of State could show to the Lord Chancellor (*inter alia*) that the Patentee would not furnish supplies at "reasonable prices."

The difficulty of ascertaining what are "reasonable prices" for instruments and munitions of war cannot be better illustrated than by reference to evidence laid before the House of Commons, 25th July 1862, on the subject of "Ordnance," 448.

Now the difficulty of assessing "reasonable prices," even with permission to use the Patent for such manufacture, will be seen if the evidence given before that Committee be referred to; but, without entering into detail, the great disparity shown by the following figures will for the present purpose be sufficiently conclusive.

If the supply of guns had been made on Sir W. Armstrong's prices of December 1858, the Crown would have paid the contractor (at least) - £757,000

If at the price of February 1862 - £320,560

Whereas the Crown paid - £416,430

The proviso as it now stands has never been acted upon by the War Department, and is practically useless.

The grant of Patents for such inventions are in other respects inconvenient; for not unfrequently the officers of the Crown working in its factories patent inventions resulting from their own employment.

Again, to secure to the Crown the inventions of its own officers made within the royal arsenals and factories, it is suggested that Patents are necessary, or that other persons will by chance hear of the invention, known but advisedly kept secret by the Crown, and obtain exclusive use thereof.

Another objection to a Patent for any really valuable invention, is the publicity attendant upon it.

The equipment of the British army must (as it has been repeatedly enforced on the attention of Parliament) be not only equal, but greatly superior to that of the continental armies, or the certain disparity in numbers would place the British army at an overwhelming disadvantage.

In 1858 (and the same practice may still exist), it was the practice of our Patent office to send the Specifications of English inventions, as soon as they were published, to Paris, Berlin, &c., and it was ascertained that Sir W. Armstrong, by patenting his time and percussion fuze in April 1858, had, by so doing, given it (by making it known) to foreign powers, although his own sovereign could not use it till he subsequently assigned it to the Secretary for War.

The disclosure made by the Patent (as the least injury caused thereby) puts this country and foreign powers upon an equality of intelligence, but if the Patentee refuses to grant it to the War Department, he places the Crown at a serious disadvantage with foreign powers.

On this aspect of the question the Ordnance Select Committee write as follows:—

"From the days when Friar Bacon involved the composition of gunpowder in a Latin anagram, down to the present time, there has always been a remarkable tendency to shroud discoveries and improvements in artillery in mystery, and to communicate them only under the seal of secrecy; it is a tradition, and has become a habit difficult to break through, an exaggerated sense of the importance of each little improvement, or discovery, an exaggerated estimate of the importance of being beforehand with opponents, has induced one generation of artillerymen, and one Government after another, to attach a value to such secrecy in this particular department of mechanical progress, which in the opinion of the Committee can neither be justified by experience or vindicated on rational grounds."

The mode of action of the shrapnel shell was kept a secret for many years, and it had the effect perhaps of preventing the adoption of that projectile by the French during the Peninsular war, but it is very doubtful whether it contributed in any sensible degree to the superiority of the British artillery, while it gave rise to such an overestimate of its importance and destructive effect as led to its being supplied in far too large a proportion, and frequently used when shot and shell would have been more

effective, and one of the first steps of the Committee of revision of 1819, under the Duke of Wellington's orders, was to make a very large reduction in the proportion.

The composition of the congreve rocket is and has always been treated as an absolute secret, but it has not given us any monopoly of that weapon, on the contrary, our rockets are at present in a very unsatisfactory state, and every foreign power has rockets which they consider as good or better.

The construction and mode of action of the Moorsom fuze was a secret from officers of the Royal artillery down to 1857, when a full account was published in Belgium, and translated into English for their information by Captain Orr, R.A., but the Committee are not aware that we reaped any naval success in the Baltic or elsewhere from our secrecy with respect to this fuze. In short, without multiplying instances, it may be asserted generally, that secrecy in these matters is almost always a self-delusion, and is more frequently injurious than otherwise when it is real. Foreign military improvements are disregarded by us, and ours by foreign nations, not from ignorance, but because each country is wedded to its own notions and habits, is slow to admit the superiority of anything foreign; because what suits the temperament or education of one people does not necessarily suit another; because an improvement which involves little alteration of material or change of ideas in one case may be attended with insuperable difficulties in another, or be precluded by the expense it involves.

"Looking to these facts, and to the increasing difficulty of maintaining secrecy, even if it were desirable to do so, the Committee do not apprehend the slightest public inconvenience from the free patenting and publication of inventions, provided the Government reserves its own liberty of action, and its right to make or use improvements in matériel of war in its own establishments."

In earlier times than the present, the statute law affecting the manufacture of and commerce in instruments and munitions of war, would appear to have been as follows:—

Under the 24 James I. c. 3., all monopolies were void, save (under sec. 10.) any Commission, Grant, or Letters Patent for or concerning the making or compounding of saltpetre or gunpowder, or the casting or making of ordnance, or shot for "ordnance;" the object of such commissions being (as we may gather from the case of the King's prerogative in saltpetre in Lord Coke's Reports, 12 Coke 14), "to provide a store for the Queen [Elizabeth] at a lower rate than before was paid."

In the 16 Car. 1., and Act was passed (Ch. 21.), for the free bringing in of gunpowder and saltpetre from foreign parts, and for the free making of gunpowder within the realm, the last section (3) enacting, "that if any person or persons shall put in execution any Letters Patent, proclamation, edict, act, order, warrant, restraint, or other inhibition whatsoever, whereby the importation of gunpowder, saltpetre, brimstone, or other the materials aforementioned, or any of them, from forraign parts, or the making of gunpowder within this realm, shall be any way prohibited or restrained that then the said person and persons so offending, shall incur and sustain the pains, penalties, and forfeitures contained and provided in the statute of provision and premmiure, made in the sixteenth year of the reign of King Richard the Second."

The next Act (1 James II., c. 8), after setting forth the great prejudice and discouragement to gunsmiths and others, arising from importation, &c., prohibited such importation except with the license of the Crown, and the 3rd section of the Act was in these words:—

"Provided always, that if any person or persons, whatsoever, bodies politic or corporate, shall by colour of this Act or otherwise, obtain from His Majesty, his heirs or successors, any Letters Patents, license of grant, for the sole making or importing any gunpowder, arms, ammunition, or other utensils of war, and shall put the same in execution, or by color thereof molest or hinder any person or persons who lawfully make any the things before mentioned in this kingdom, or shall obtain any Letters Patents, license, or grant, for the importing of gunpowder, arms, ammunition, or other utensils of war, by way of merchandize to make profit thereof, other than for the immediate furnishing of the public stores of His Majesty, his heirs and successors, that then the person and persons so offending shall incur and sustain the pains, penalties, and forfeitures contained and provided in the statute of provision and premmiure made in the 16th year of the reign of King Richard the 2nd, and be disabled to hold any office or employment under His Majesty, his heirs and successors, and all and every such letters, license, patent, and grant,

and every of them for the sole making and importing the said commodities shall be void to all intents and purposes as if the same had never been had or made, any clause of non obstante or other provision or covenant to the contrary thereof in anywise notwithstanding."

From the year 1685 until the consolidation of the Custom Acts by Mr. D. Hume in 1825, this declaration against any grant of a monopoly in munitions of war remained in the statute book.

With respect to a remedy recently proposed, namely, "to make the previous consent of the Crown, signified by the Secretary of State (with or without special terms or conditions), an indispensable requisite in the grant of any future Letters Patent of this kind," the Ordnance Select Committee on being referred to wrote thus:—

"We apprehend great difficulty in the working of such a clause, from the impossibility of drawing a line between inventions which have or may have a directly military bearing, and those which *primâ facie* only concern the gun trade, or the manufacture of material of war in commerce, and they would venture to suggest in preference a general enactment that no Patent right shall be of force to prevent the Crown from manufacturing or repairing warlike matériel in its own departments, or from employing for such purposes the materials, forms, processes, and machinery found most suitable, leaving the Crown in the same position as any other purchaser in respect to articles not repaired or manufactured in Royal establishments.

The remedy that most readily suggests itself to meet the present difficulties is to amend the proviso now inserted, by adding to it that the Patent shall not be construed to prevent the use of the invention by the Secretary for War, or his officers or contractors, but "without prejudice to such compensation as the Patentee may claim and the Secretary of State may agree to give, or, in case of difference, which the Treasury shall award."

The use would then be free and open to the War Department. The officers of it have no desire to deprive any fellow subject of his just rights, but to be embarrassed with the difficulties of a previous negotiation, which they have no power to bring to a successful termination before they can ever try whether the invention is or is not of any real practical utility, places both the inventor and the Secretary of State in a false position.

The objection that has been urged to this proviso, viz., that it would destroy the character of the grant as a grant of monopoly, appears to be met by the decision of the Privy Council in Pettit Smith's case. There the Judicial Committee, in advising the Crown to renew the Patent, directed that the following proviso should be added to the Patent:—"That it shall be lawful for the Lord High Admiral of the United Kingdom of Great Britain and Ireland, and for the Commissioners for executing the office of High Admiral for the time being, to contract with any person or persons whomsoever for the manufacture and fitting, and cause to be manufactured and fitted by any person or persons whomsoever, at any time or times, and at any place or places whatsoever, the said Invention, for the service of Her Majesty and Her Majesty's heirs and successors: such person or persons shall be at liberty to manufacture and fit the same accordingly, for the service of Her Majesty, Her heirs and successors, without any licence, let, or hindrance from the Patentee, his executors, administrators, or assigns, and without the Patentee, his executors, administrators, or assigns, being entitled to any compensation or damages whatsoever for the same; and that there should also be a condition, that if the Patentee, his executors, administrators, or assigns, shall not supply or caused to be supplied and fit or cause to be fitted for Her Majesty's service the said invention as he or they shall be required to supply or fit the same, in such manner, at such times, and at and upon such reasonable prices and terms as shall be settled for that purpose by the Lord High Admiral of the United Kingdom of Great Britain and Ireland, or by the Commissioners for executing the said office for the time being, then that the said Letters Patent shall be void."

CHAS. M. CLODE.

War Office, June 1864.

Paper B.

A.D. 1623-24.—21 James I. c. 3.

Provided always, and be it enacted, that this Act, or any declaration, provision, disablement, penaltie, forfeiture, or other thing before mentioned, shall not extend to any comission, graunt, or Lres Patent heretofore made, or here-

after to be made, or for or concerning the digging, making, or compounding of saltpeter or gunpowder; or the casting or making of ordinance, but that all and every the same graunt, comission, and Lres Patent, and all other matters and things tending to the maynteyning, strengthening, or furtherance of the same, or any of them, shalbe and remayne of the like force and effect, and no other, and as free from the declarations, provisions, penalties, and forfeitures contayned in this Act, as if this Act had never been had nor made, and not otherwise.

A.D. 1640.—16 Charles I. c. 21.

An Act for the free bringing in of gunpowder and salt-peter from forraign parts, and for the free making of gunpowder in this realme.

Whereas the importation of gunpowder from forreign parts hath of late times bene against law prohibited, and the making thereof within this realm ingrossed, whereby the price of gunpowder hath bene excessively raised, many powder works decayed, this kingdom very much weakened and endangered, the merchants thereof much damnified, many mariners and others taken prisoners and brought into miserable captivity and slavery, many ships taken by Turkish and other pirates, and many other inconveniences have from thence ensued, and more are likely to ensue, if they be not timely prevented: Be it therefore declared and enacted, by the King's most excellent Majestie, and the Lords and Commons in this present Parliament assembled, and by the authoritie of the same, that it shall and may be lawful to and for all and singular persons as well as strangers as naturall born subjects of this realm to import and bring into this kingdom any quantities of gunpowder whatsoever, paying such customes and duties for the same as by authority of Parliament shall be limited and set downe.

And be it further declared and enacted, by the authority aforesaid, that it shall and may be lawful to and for all and singular His Majesties subjects of this his realm of England to make and sell any quantities of gunpowder at his and their will and pleasure, and alsoe to bring into this kingdom any quantities of saltpeter, brimstone, or any other materials necessary or requisite for the making of gunpowder.

And lastly, be it enacted by the authority (aforesaid), that if any person or persons, from and after the 10th day of August 1641, shall put in execution any Letters Patents, proclamations, edict, act, order, warrant, restraint, or other inhibition whatsoever, whereby the importation of gunpowder, saltpeter, brimstone, or other the materials aforementioned or any of them, from forraign parts, or the making of gunpowder within this realm, shall be any prohibited or restrained. That then the said person and persons so offending shall incurre and sustain the pains and penalties and forfeitures contained and provided in the statute of provisions and premunire made in the 16th yeare of the reign of King Richard the 2nd.

A.D. 1685.—1 James II. c. 8.

An Act against the Importation of Gunpowder, Arms, and other Ammunition and Utensils of War.

Whereas to the great prejudice of this kingdom and the discouragement and impoverishment of the gun smiths, and others, artificers, great quantities of arms and ammunition, have of late years bene imported to the endangering the peace and quiet of this kingdom.

2. For remedy whereof bee it enacted by the King's most excellent Majestie, by and with the advice and consent of the Lords spirituall and temporall, and the Commons in this present Parlyament assembled, and by the authoritie of the same, that it shall not at any time from and after the 10th day of July 1680, be lawful to or for any person or persons whatsoever *without licence from His Majestie, His heires and successors to import or bring into this kingdom of England, dominion of Wales, or towne of Berwicke upon Tweede*, by way of merchandize any gunpowder, arms, ammunition, or utensills of war upon paine and forfeiture of all and every such goods soe imported as aforesaid to His Majestie, His heires and successors, and the person or persons who shall soe import or bring in the same, or in in whose custodie any such gunpowder, arms, ammunition

or utensills of war shall be found, being thereof lawfully convicted, shall forfeite treble the value of the goods soe imported, one moyety thereof unto His Majestie, His heires and successors, and the other moyety thereof to such person or persons who will sue for the same by action of debt, bill, plaint, or information in any of His Majesties Courts of Record at Westminster, wherein noe essoigne, protection, or wager of law shall be allowed.

3. Provided always, that if any person or persons whatsoever, bodyes pollitique or corporate, shall by colour of this Act or otherwise obtaine from His Majestie, His heires or successors, any Letters Patents, licence, or grant, for the sole making or importing any gunpowder, arms, ammunition, or other utensills of war, and shall putt the same in execution, or by colour thereof molest or hinder any person or persons who lawfully make any the things before-mentioned, in this kingdom, or shall obtaine any Letters Patents, licence, or grant for the importing of gunpowder, arms, ammunition, or other utensills of war, by way of merchandize to make profit thereof other than for the immediate furnishing of the publique stores of His Majesty, His heires and successors, that then the person and persons soe offending, shall incurre and sustaine the paines, penalties, and forfeitures contained and provided in the statute of provision and premunire, made in the 16th yeare of the raigne of King Richard the Second, and be disabled to hold any office or employment under His Majestie, His heires and successors, and all and every such Letters, licence, Patent, and grant, and every of them for the sole making and importing the said commodities, shall be void to all intents and purposes, as if the same had never bene had, or made any clause of non obstante or other provision or covenant to the contrary thereof, in anywise notwithstanding.

A.D. 1825.—6 George IV. c. 105.

An Act to repeal the several Laws relating to the Customs.

Whereas the laws of the Customs have become intricate by reason of the great number of the Acts relating thereto which have been passed through a long series of years: And whereas it is therefore highly expedient for the interests of commerce and the ends of justice, and also for affording convenience and facility to all persons who may be subject to the operation of those laws, or who may be authorized to fact in the execution thereof, that all the statutes now in force relating to the Customs should be repealed, and that the purposes for which they have from time to time been made should be secured by new enactments exhibiting more perspicuously and compendiously the various provisions contained in them: May it therefore please Your Majesty that it may be enacted; and be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that from and after the 5th day of July 1826, so much and such parts of the several and respective statutes herein-after mentioned and recited, made in the Parliaments of England and of Great Britain respectively, as relates to the trade and navigation of this kingdom, or to the importation and exportation of goods, wares, and merchandize, or as relates to the collection of the revenue of Customs or prevention of smuggling, as are herein-after set forth, shall be repealed.

26. An Act passed in the first year of the reign of King James the 2nd, intituled An Act against the importation of gunpowder, arms, and other ammunition and utensils of war.

444. And be it further enacted, that the said several Acts and parts of Acts before mentioned, recited, and set forth, so far as the same shall be in force at the time of the commencement of this Act, are hereby accordingly repealed, except so far as the said Acts, or any of them, or anything therein contained, repeal any former Act or Acts, or any part thereof, and all and every which said Act or Acts, or the parts thereof so repealed, shall remain and continue repealed to all intents and purposes whatsoever, and except so far as relates to any arrears of duties or drawbacks which shall have become due and payable, or any penalty or forfeiture which shall have been incurred, and save and except so far as any of the said Acts which relate to Ireland create or regulate any jurisdiction for the trial of offences committed in Ireland.

(5).—APPENDIX to the EVIDENCE of Mr. WEBSTER.

REPORT OF COMMITTEE OF BRITISH ASSOCIATION and of the SOCIAL SCIENCE ASSOCIATION on the AMENDMENT OF THE PATENT LAWS. A.D. 1860.

At the Meeting of the Association held at Bradford in 1859 a Committee was appointed to co-operate with a Committee of the British Association, held at Aberdeen in the same year, to consider and report on the best means to be adopted for affording better protection and security to property in inventions, and for obviating the objections made to the operation and working of the Patent Laws.

The report and discussion at the meeting out of which, on the suggestion of your highly valued member the Right Honourable Joseph Napier, the subject was brought under the consideration of this Association, had special reference to the temptation and encouragement afforded by the state of the law to speculation in obtaining, infringing, and litigating Patent rights, to the consequence of the inducements to issue Patents, and to the application of the funds levied on inventors as fees on the granting of Patent rights; the remedy to be applied in this case would appear to be a fitting subject for the section of jurisprudence and amendment of the law of this Association. Many important and beneficial changes were made in the Patent laws by the Patent Law Amendment Act of 1852, and much praise is due to those who persevered in obtaining that instalment of reform. That measure was limited almost exclusively to the alteration of the system of granting Patents, the increased protection for such property being left advisedly for further legislation. Existing interests prevented so ample a measure of reform in this limited sphere being effected as the promoters of the Act desired, but any change was thankfully received as a great improvement on the existing system; but here, as not unfrequently happens in the progress of reform, the removal of one evil gave rise or importance to others in the progress of the working and development of the new system.

Previous to the passing of this Act the cost of obtaining Letters Patent was so great that many inventors were deprived of that protection for their inventions to which they were justly entitled, the consequence was injurious to individuals and loss to the public; the stimulus to invention no longer operated; men of small means did not think it worth while to tax their ingenuity for inventions of which they were unable to secure the benefit; or, as was sometimes the case, valuable inventions were locked up and kept from the public simply because the possessor could not afford to pay the price of protection. By the above Act a new system was introduced, and the cost of obtaining a Patent reduced to such sum that the privilege of protection was no longer limited to the rich inventor. Previous to the passing of this Act the complaint was that Letters Patent were too costly to be often applied for; now it is that too many are granted; that the cost is so small, and the facility of obtaining so great, that claims of all kinds, however frivolous or absurd, and without even the merit of novelty, are made the subjects of Patent privilege. The consequence is, that the community is deluged with invalid and worthless Patents, which serve no other purpose than to harass the public, obstruct the progress of invention, encourage litigation, and in some cases serve as instruments of oppression. A return to high charges would no doubt remove the evil by lessening the number of applicants: such a retrograde movement, however, is out of the question; recourse cannot be had again to high charges and exorbitant fees, which acted as a check, not on the bad Patent, but on the poor man, and consequently some other remedy must be found. It is unnecessary to do more than advert to the evil effects produced by the too indiscriminate granting of Letters Patent, they are too manifest to require further comment. The question is, how the evil may be remedied without infringing upon the rights which inventors have to property in inventions, the product of their own brains, even though such inventions should be worthless, or to some extent anticipated by others. Examination and investigation, and a report by competent persons, has been naturally suggested as an obvious remedy. The effect to be given to the result of such an examination will be presently considered, but one thing is certain, that without a preliminary examination of this kind it is impossible to decide whether the invention is or is not deserving of a grant.

In the evidence before the Select Committee of the House of Lords, upon which the Patent Law Amendment Act was based, the evils which have arisen from reducing the costs of Patents were in a great measure anticipated, and the question of a check being placed upon the granting of Patents, through the medium of a preliminary examination, was fully discussed. Strong opinions were

expressed in its favour by nearly all the witnesses who were examined. They differed, however, in their opinions as to how the result of the examination should operate. By some it was thought that the system pursued in America should be adopted, and a grant refused, if the report upon such examination should be unfavourable to the novelty or utility of the invention in respect of which the Patent was applied for. Others considered that a grant ought not in such case to be refused; but that the applicant should, notwithstanding such adverse report, be at liberty to prosecute his claim; such report, however, being placed on record against him, believing that few applicants would, in the face of an adverse report from competent and independent authority, pursue the application, incur the cost, and encounter the risk of an invalid Patent, but would withdraw their application. Against the former and in favour of the latter opinion, it is urged that the American system is not satisfactory, and is in danger of breaking down altogether from an attempt to do too much; that any attempt to give a guaranteed title must be an inevitable failure. We incline to the opinion that it would be very undesirable to make the result of such examination the ground for refusing a grant of Letters Patent, even although such result had been to show that the invention had neither novelty, originality, nor utility.

In the first place, if a Patent were to be refused for want of novelty, originality, or utility, it would be necessary that the investigation should be of the most searching and accurate character. A mere *ex parte* examination by scientific men would not suffice; but facts would have to be ascertained and evidence sifted, which would require all the machinery of a court of justice.

In the second place, an investigation of the merits of the invention, in respect of these particulars, could not satisfactorily be made, seeing that, as regards novelty and originality, these may depend upon facts which time and inquiry can alone bring to light; and that as regards utility, which must, to a great extent, be matter of speculation, the opinions of the most able and scientific men on inventions greatly in advance of the existing practice are, as experience has shown, but of little value. Great inventors must be in advance of the age; they and their inventions have to encounter the combined opposition of interest and ignorance.

Thirdly. If the tribunal were to be so constituted, as it ought to be, if upon its decision were to depend the granting or refusal of a Patent, we should then have this anomalous state of things,—the decision must be either against or in favour of the invention. If against, then the grant is refused, and (subject, of course, to a right of appeal) nothing more is heard of the matter; but if the decision were to be in its favour, and the grant thereupon made, and an action for infringement were subsequently to be brought upon it, then the decision of a tribunal possessing all the qualifications for determining the matter in question would be liable to be reversed by one in every respect inferior. For these and other reasons which have been urged, it does not appear to us expedient a grant should be refused on the ground that the invention in respect of which it is made appears open to serious objections on the ground of want of novelty or utility. The result, however, of such preliminary examination should be available to the purpose of explaining to inventors how far and in what way their inventions are affected by previous discoveries, believing that in most cases applications would be withdrawn when the applicant had good grounds for concluding that a Patent, if granted, would be invalid, the report should be placed on record, and open to the public, and the applicant permitted to proceed at his peril. Few inventors would pursue the application in the face of such a report; their object generally is to secure profit from their inventions by reason of the exclusive privileges conferred by the law for a limited time, for the trouble, anxiety, and expense of perfecting and bringing out the invention; but if an inventor, thus advised and warned, thinks fit to prosecute his application, the State will have done its part in preventing the reckless multiplication of grants which there would be slight probability of being sustained, and which would, in all probability, if granted, prove of no benefit, but a positive injury, to the inventors.

It has been urged that inventors, as a class, are indisposed to listen to such suggestions, that they must be left to themselves and to the effect of improved education and extended knowledge. This may be true, as applied to a very small class of wild or ignorant schemers, but it is not true as regards the very large class of inventors who sit down deliberately to supply and provide for an existing want and deficiency. Such persons will be advised by the result of competent investigation, from which a vast dimi-

nution in the number of Patents granted may be confidently anticipated. Experience of what did in fact take place under the Protection of Inventors Act, as stated by Mr. Webster, in the Introduction to his "New Patent Law," confirms this opinion. Mr. W. says, "In the administration of that Act frequent opportunities were afforded of suggesting to applicants for provisional protection that the supposed invention possessed no feature, either of novelty or of utility, and was not worth further prosecution. In no less than 77 cases out of 601 applications such suggestions were acquiesced in, thus affording conclusive evidence of the importance of and of the benefit to be conferred by protecting inventors against their own ignorance. The majority of the persons acquiescing in such suggestions were not of the poorest class; they were persons who had taken up some scheme foreign to their education or business, and who could have found money for a Patent which would have been either invalid or utterly worthless, but which, when once obtained, they might in many cases have been tempted to maintain, even by litigation." No good reason has been suggested why, if the course now recommended should be pursued, beneficial results similar to those arising upon this special occasion should not be generally obtained. Thus the evil would be met, not by an arbitrary refusal on the part of the Crown to make the grant, but by the voluntary withdrawal by the inventor of his application for it; a remedy much more satisfactory to the inventor, at the same time that it would be more consistent with the principles of the Patent Law.

Such a preliminary examination as that now recommended was contemplated by the promoters of the Act of 1852, of the Bills of the session of 1851, as passed by the House of Lords, and sent down to and amended by the House of Commons, and the Bill of the session of 1852, as passed by the House of Lords, and sent down to the House of Commons, contained clauses for ensuring and requiring such examination and report in all cases.

This clause, however, was afterwards altered, and instead of such examination taking place in all cases in aid of the judgment of the law officer, it was left in the discretion of the law officer to call to his aid such scientific or other persons as he might think fit, and to cause to be paid by the applicant such remuneration as the law officer should appoint.* The result has been that the granting of Patents is practically unrestricted and without investigation. Now, if such a preliminary examination be desirable, it does seem most objectionable to leave to the option of the law officer whether or not it is to take place. Such examination ought to be had in *all cases*, and not to be confined to those where there appears to be some special difficulty.

The investigation which does take place is practically confined to the few cases of rival claimants, applying for a Patent for inventions supposed to interfere with each other, or to the still fewer cases in which there may be reason to suppose that application is made for an invention surreptitiously obtained, and in fraud of another, the real inventor.

The number of cases in which any inquiry or investigation takes place, and the character of such inquiry and investigation, are further restricted by the fact of the provisional specification being a secret document until six months after the date of the application, that is, until the final or complete specification is filed, and also by the law officers declining in ordinary cases to enter on any question of the validity of the Patent when granted, as, for instance, want of novelty.

It may be expedient and necessary, in reference to obtaining foreign Patents, that the invention should be kept secret, or, in other words, that the provisional specification should not be open to inspection for a limited term after the application for the Patent, but the whole machinery of the statute (sect. 12 and 13), requiring advertisements and particulars of objections to the granting of the Patent to be sent in and referred to the law officer, is wholly inconsistent with the supposition that inspection was not to be had of the provisional specification as the authentic and only source of information as to the nature of the invention for which a Patent is sought.

How can such particulars be fairly and properly prepared by a person having no information as to the invention for which he is about to oppose the application for a Patent, and the result is that opposition for any useful purpose, as a check on the number of Patents, does not exist.

It has been proposed, that on notice being given of the intention to proceed with the Patent, the provisional specification should be open to inspection; the effects of this

would be to render it a closed document for four or five months from the date of the application. This would be ample time for any legitimate purpose, especially when it is remembered that *two* months was the time originally allowed for enrolling the specification after the date of a Patent under the old system for one only of the three countries. It should also be borne in mind that, under the new system, the applicant obtains provisional protection and property in his invention for six months on his own *ex parte* statement; the protection and inchoate rights thus obtained is one of the most admirable features of the new system.

Your valued member, Lord Stanley, in reference to this subject,* writes as follows:—"A third grievance, connected in some measure with the second, is the want of publicity given to provisional specifications, whereby the right to oppose applications for Patents, though freely granted by the Act, becomes in practice inoperative." The actual mode of procedure is as follows:—The demand for provisional protection is placed before the law officers. On their certifying that the invention is therein intelligibly and clearly described, provisional protection is granted. The description, the document, on inspection of which the privilege in question has been conceded, remains secret. Within five months from the granting of such protection, the party possessing it must give notice of his intention to proceed with or abandon the Patent. On such notice being given the claim is advertised, and all parties interested in opposing it are invited so to do; but the invitation is couched in terms so vague as to leave the opposing party entirely in the dark, ignorant whether his interests really are or are not affected by the Patent claimed, for the title only of the invention proposed to be patented is made known, and this descriptive title may be of the most vague and general kind; the specification, by which alone its real nature can be understood, is not submitted to inspection. This state of things certainly was not contemplated by the Act of August 1852, which runs thus:—

"The Commissioners shall cause true copies of all provisional specifications left at the office of the Commissioners to be open to the inspection of the public, at such times, after the date of the record thereof respectively, as the Commissioners shall by their order from time to time direct."

It may be contended that this clause is permissive only, not compulsory. Doubtless; but a legislative permission implies at least an expectation that it will be used; and it would be hard to construe the words "at such times as the Commissioners shall direct" as meaning "at no time whatever."

The necessity of publicity can, I think, scarcely be disputed by any reflecting person. To create a monopoly is an exceptional process, justified, as I have said before, only by the novelty and utility of the invention patented; these claims of novelty and utility cannot be sufficiently tested without allowing parties who deny them to be heard in opposition; such opposition is contemplated, sanctioned, encouraged by the Act. Can any one imagine that the Legislature intended to make its own provisions nugatory by conceding a right, yet denying the only means by which that right can be rendered available? The theory is absurd. But why, it will be asked, was so large a discretion left in the Commissioners' hands? For this reason, that a certain interval of secrecy after the granting of provisional protection is desirable, in order to give time for experiments, and also to prevent the invention being fraudulently patented abroad by other parties. It is neither necessary nor expedient that the specification should be thrown open immediately on provisional protection being granted. The fairest rule would be to make it public as soon as the inventor gives notice of intention to proceed—*i.e.*, before, but only just before, the opposing parties are heard.

The Committee would conclude this portion of their report by the recommendation that the provisional specification should be open to inspection on the applicant giving the notice, at the final stage, of his intention to apply for the warrant of the law officer for the sealing of the Patent, or, to adopt the language of Lord Stanley, "That ampler opportunities should be given for opposition by making public the specifications for inventions proposed to be patented in time for opponents to have cognizance of them." For this change no legislative interference is required; it lies within the scope of the powers of the Commissioners of Patents.

Provisional Specification.

The provisional specification introduced by "The Patent Law Amendment Act, 1852" (sect. 6), is a statement in writing describing "the nature of the invention." It is an expansion of the brief description of the invention con-

* See the Patent Law Amendment Act, 1852 (15 & 16 Vict. c. 83, s. 8). The clauses in the Bills of 1851 and in the Bill of 1852, as sent from the Lords to the Commons, made this imperative. See also speech of the present Lord Chief Justice (Sir A. Cockburn), when Attorney-General, on moving the second reading of the Bill in the House of Commons, 25th July, 1811—118 Hansard, 1834.

* See a memorandum on suggested improvements in the Patent Laws, A.D. 1856.

tained in the title, and was intended to check practices, not uncommon, of an open Patent, or a Patent under a "blind" title, as it was technically termed, for one, and specifying another, or most materially altered invention. This provisional specification is left with the petition and declaration, and becomes the record upon which the Patent is granted; the law officer upon being satisfied that it describes the nature of the invention is to allow the same, and grant a certificate of provisional protection. From this new system the greatest benefits have resulted to the honest inventor and the public; it affords an effectual check to the evil above referred to, and instances are of constant occurrence in which the honest inventor is rendered secure in rights, of which he would inevitably have been deprived under the old system, under which no rights were secured until the actual sealing of the Patent, an interval varying from three to six weeks, during which the Patent might be defeated by publication of the invention.

No objection or improvement has been suggested in this part of the new system, except more consistency in practice as to the form and amendment of or alteration in these documents, so as to introduce more consistency of practice by successive law officers, a result which would follow on the system of examination above suggested.

The want of consistency of practice above referred to in reference to the provisional specifications is most strikingly apparent in the allowance and disallowance of disclaimers and memoranda of alteration, as to which great discrepancy, not to say inconsistency, exists. The views of different law officers as to what ought to be allowed under the statute (5 & 6 Will. IV., cap. 83.), commonly called Lord Brougham's Act, are so various and conflicting as to be matter of serious speculation and consideration, a practice which for obvious reasons ought to be checked and discouraged by every possible means. The Patent Law Reformers of 1851 did not attempt to deal with this difficulty, their object being directed to reform in the system of granting Patents rather than to the modification or protection of rights when granted.

The main difficulty in this case is the attaining to a due and proper appreciation of the effect of a proposed alteration, which, though apparently of little consequence, may with the foresight of those who propose it, most materially affect the rights of other inventors and of the public.

Two remedies suggest themselves; the one that each such proposed disclaimer or alteration should be the subject of a special report from competent examiners, as one or more of the persons intrusted with the preliminary investigation which has been recommended; the other that the decision of the law officer should be the subject of appeal to one of the courts of common law, especially in cases in which the disclaimer or memorandum of alteration may have been resorted to to obviate the consequences or result of litigation. For this purpose recourse must be had to fresh legislation.

This may be regarded as part of or intimately connected with the more comprehensive question of amendment in legal proceedings for the protection of intellectual labour, brought before the Association at its meeting last year.*

Upon this important subject a wide difference of opinion exists, most, however, concur in the opinion of the necessity of a substantial change in the trial of Patent causes.

The views of some are directed to a modification in the nature and proceedings of the tribunals before which actions for infringement are tried, a modification of which will, in their opinion, be more beneficial to the public than a total change of the present system, as advocated by others. It cannot be doubted that at present great injustice is done, by the inability of juries to grapple with the intricate questions raised in actions for infringement; nor can it be a matter of surprise, that they are unable to understand the nice distinctions made between different processes or machines, an accurate appreciation of which is essential to a just verdict. Taken indiscriminately, without the slightest reference to manufacturing knowledge or scientific acquirements, embarrassed by the contradictory evidence given by scientific witnesses, and still more puzzled by the speeches of contending advocates, it is impossible that they can form a right judgment upon the point at issue. Were it not that juries are under the direction of a learned judge their verdicts, in questions of Patent law, might as well be taken by ballot. Such a tribunal then is evidently unequal to the trial of questions of this nature. It has been proposed that actions of infringement should be tried by the judge alone; to this proposition, however, there are many objections upon which it is unnecessary to dwell.

A tribunal composed exclusively of scientific men would be equally objectionable, from the little experience men of this class have in dealing with evidence, and the tendency

they have to take up strong views in support of their own theories, a fact abundantly proved by the feelings of partizanship exhibited by them when testifying as witnesses on scientific questions in a court of law.

A combination of legal and scientific qualifications would appear to present the best and most effective mode of dealing with these questions, as a system somewhat analogous to the practice in the Admiralty Court, where the Elder Brethren of the Trinity House are called in to assist the judge. The appointment of a limited number of persons of experience in the subject as the jury, or to assist the judge in the Common Law Courts, upon the questions arising in actions for infringement of Patent rights, would, in the opinion of the Committee, be a vast improvement on the present system; such assessors, being men of science, and conversant with inventions and manufactures generally, would at once appreciate the peculiarities of the respective processes or machinery, the similarities and dissimilarities, the successive steps which have led to the invention under consideration. Their experience in scientific and manufacturing information would be a check on the too great zeal and partizanship which is apt to be exhibited on the matter in dispute. Such assessors might be selected by the parties, in case they could agree on the whole number, or by the judge, from a list approved by the Commissioners, of persons not otherwise engaged professionally in advising on inventions.

These assessors would virtually discharge the functions of the jury, they would find all such facts as might be necessary, under the direction of the learned judge; they would be a jury say of five persons, competent from their previous training to discharge, in respect of scientific matters, that which the jury summoned under the existing system is competent to discharge in respect of the ordinary questions submitted to them arising out of the ordinary transactions of life; they would enable parties to arrive in a much more satisfactory manner at that which is the practical end of the trial at law in nine-tenths of the Patent causes, a special case for the consideration of the Court, which may be the subject of appeal to the highest tribunal.

Licences.

Another question of importance, and which formed the subject of a communication to the Liverpool Meeting (1858) of the Association, and which also was the subject of evidence before the Select Committee of the House of Lords in 1851, is the adoption of a system of *compulsory* licences. One argument of those who object to the whole system of Patent grants for inventions is, that such a system tends to obstruct the progress of invention; they say, and truly, that the advance in any branch of manufacture generally takes place gradually, and step by step; each step being something gained upon that which preceded it, and that the case is exceptional where any great stride is made in invention; that most great improvements may be traced as consisting of a series of successive slight advances. This being so, and inasmuch as any one of these steps may be made the subject of a Patent, the consequence is, that other inventors who are perhaps following in the same line of improvements are debarred using it, and so prevented attaining the ultimate object of their inventive skill; an injury not confined to themselves, but extending to the community, whose interests are concerned in their success. It therefore becomes important to inquire whether the obstacle thus placed in the way of progress may not be removed, so as to give full play to the genius of others without depriving the first inventor of the rewards to which he is justly entitled.

In most cases this object will be accomplished by arrangement between the parties, without interference on the part of the Legislature. By a small payment the inventor is recompensed and the path of improvement again opened. But cases may occur in which an inventor may be obstinate, and influenced either by motives of cupidity or ill-will may refuse the use of his invention, or his demands may be so unreasonable that it is impossible to comply with them.

It is in cases of this kind that we think the Legislature ought to interfere and to compel a licence at a certain rate of payment. It is not probable that many cases would occur in which there would be the necessity for resorting to such compulsory process; but instances of obstinate refusal have occurred, and might occur again, which unless provided for may be productive of very great hardship to individuals requiring a licence to enable them to proceed in a course of improvements, but unable to obtain it by other means. This suggestion appears effectually to meet the oft-repeated objection to Patent laws, of obstructiveness to improvement. Any alteration removing this ground of objection, without interfering with the stimulus afforded to inventors, could not be otherwise than beneficial in its results. The introduction of a compulsory system of licences appears well calculated to accomplish this object,

* See Transactions, 1859, p. 237-244.

because thereby the reward of invention would still be secured, and at the same time no impediment put in the way of the progress of others.

It has been urged that the inventor, if compelled to allow a participation in the benefits to be derived from his invention, has not that full power over the creation of his genius to which he is entitled, that he ought to have absolute control over the creations of his own intellect, over that which more than any property is peculiarly his own; but it must be borne in mind that the public have to be considered as well as the inventor; that the exclusion from the multiplication of copies of that which one of the public is lawfully possessed of is matter of municipal regulation; that if the rights of the many are to be restricted in favour of one *à fortiori*, when the public good equally demands it, the privileges thus conferred on the individual may be modified in behalf of the community. Besides, there is no reason why the State should bind itself to create such an absolute interest; if one more limited will equally secure the interests of the public that ought to suffice, and the inventor can hardly grumble so long as he is permitted and enabled to derive those benefits which it is the natural object of all inventors to secure. The rights with which such a compulsory licence would interfere are of a fanciful rather than of a real character, and no real loss would in fact accrue to an inventor by its adoption. A fair rate of payment can always be ascertained and levied; it is very possible that in some cases a larger sum may be assayed to an inventor than he would otherwise receive. For these reasons it seems not unreasonable that the Legislature should make it obligatory on every patentee to grant a licence, if required, the mode and rate of compensation to be fixed by persons appointed by the Crown, but there is no reason why this duty should not be performed by the persons appointed to discharge the duties of the preliminary examinations, or by the Special Commissioners which the Crown, under the first section of the Patent Law Amendment Act (1852), is empowered to appoint.

Your Committee, in connexion with this subject, would advert to a suggestion as to the expediency of money compensation to inventors, and purchase for the public of inventions prior to the expiration of the term of the Patent.

The "Inventors' Fund" (as the surplus of the fees levied in the form of stamp duties on the granting of Patents over and above the legitimate expenses of the system has been termed) is adequate, and would be most appropriately applied to this as well as other purposes beneficial to inventors.

On application for an extension of the term of Letters Patent under Lord Brougham's Act, the Judicial Committee of the Privy Council are in a position to estimate what would be a proper compensation, in lieu of an extension of the term; the financial position of the Patent, namely, its past and probable future earnings, the charges to which the inventor and invention have been subject, are before their Lordships, who, according to principles of ordinary calculation, put a money value on the expectancy of the extended Patent. It would frequently be beneficial to the applicant and to the public that such expectancy should be compensated for at once, and the invention become the property of the public.

The attention of your Committee has been also directed to the necessity of some amendment in the proceedings of actions at law, with the view of the plaintiff and defendant respectively having more precise information as to the real nature of the matter in dispute; as for instance that the defendant should be informed in what the alleged infringement consists, and that he should be informed as to the nature of the attack to be made on his Patent, and also as to the importance of a consolidation of the numerous statutes or parts of statutes relating to Patents for inventions.

Your Committee conceive that these objects will be provided for in any future legislation, which in conclusion they would recommend to be directed to the following objects:—

1. Some check by a previous enactment and report on the present uncontrolled granting of Patents for inventions.
2. In trial of Patent causes by a judge and jury of assessors, instead of by a judge and jury selected as at present.
3. A system of compulsory licences and money compensation by way of purchase for Patent rights.
4. Consolidation and amendment of the several statutes relating to Patents for inventions.

REPORT on the PATENT LAWS.—Presented by JAMES HEYWOOD, M.A., F.R.S., to the Meeting of the BRITISH ASSOCIATION at Manchester, A.D. 1861.

The founders of the British Association, at the conference at York in 1831, pointed out the revision of the

Patent laws as one of the objects specially deserving the attention of a scientific association; and committees have from time to time been appointed and reported in furtherance of that object. During the last 30 years, and especially since the new Patent Law (which came into operation on the 1st of October 1852) many of the grievances complained of, namely, the first cost of Patents; the separate Patents for England, Scotland, and Ireland; the delay and consequent risk in passing through the several offices of the three countries; the absence of all protection until the Patent was obtained; the inaccessibility of the specifications of existing Patents—have been removed, but others still exist which have been the subject of the reports of the committees and of discussions at the meetings of the Association.

At the Liverpool meeting of the Association (September 1854) attention was specially directed to the appropriation of the monies, amounting to upwards of 70,000*l.* a year, raised from inventors obtaining or applying for Letters Patent, and a committee was appointed "for the purpose of taking such steps as may be necessary to render the Patent system and the funds derived from inventors more efficient and available for the reward of meritorious inventors and the advancement of practical science."

The report of that Committee and the reports of Committees appointed at subsequent meetings of the Association at Glasgow, Cheltenham, Leeds, and Aberdeen, concur in recommending that the surplus derived from the fees on Patents, and which has been termed the Inventors' Fee Fund, should be applied at present to—

1. The erection of suitable offices for the Commissioners of Patents, and a free library of reference and consultation.
2. The erection of a museum for the preservation and exhibition of models of inventions, in preference to a reduction of the fees on Patents.

In the discussion which took place at Aberdeen, the inadequacy of the laws for protecting property in inventions, the temptation and encouragement consequently afforded to piracy and speculation, the necessity of more stringent proceedings for the suppression, checking, and control of such practices was strongly insisted on by inventors and others conversant with the Patent system, and the Section, on the suggestion of the Right Hon. Joseph Napier, unanimously recommended the subject to the Jurisprudence Committee of the National Association of Social Science at its meeting during the ensuing month at Bradford, which resulted in the appointment of a joint Committee of the two Associations, which resulted in the following resolutions:—

BRITISH ASSOCIATION for the ADVANCEMENT of SCIENCE.—RESOLUTIONS of the PATENT LAWS COMMITTEE, agreed upon in London, 1861.

- I. That all applications for grants of Letters Patent should be subjected to a preliminary investigation before a special tribunal.
- II. That such tribunal shall have power to decide on the granting of Patents, but it shall be open to inventors to renew their applications notwithstanding previous refusal.
- III. That the said tribunal should be formed by a permanent and salaried judge, assisted when necessary by the advice of scientific assessors, and that its sittings should be public.
- IV. That the same tribunal should have exclusive jurisdiction to try Patent causes, subject to a right of appeal.
- V. That the jurisdiction of such tribunal should be extended to the trial of all questions of copyright and registration of design.
- VI. That the scientific assessors for the trial of Patent causes should be five in number (to be chosen from a panel of thirty to be nominated by the Commissioners of Patents), for the adjudication of facts, when deemed necessary by the judge or demanded by either of the parties.
- VII. That the right of appeal should be to a Court of the Exchequer Chamber, with a final appeal to the House of Lords.
- VIII. That for the preliminary examination the assessors (if the judge requires their assistance) should be two in number, named by the Commissioners of Patents from the existing panel; the decision to rest with the judge.
- IX. That the Committee approve of the principle of compelling patentees to grant licences on terms to be fixed by arbitration, or in case the parties shall not agree to such arbitration, then by the proposed tribunal, or by an arbitrator or arbitrators appointed by the said tribunal.
- X. That a report be drawn up in conformity with the resolutions passed by this Committee, and that the Council, if such report be approved by them, be requested to allow it to be read at the meeting of the British Association to be held at Manchester this year.

APPENDIX No. II.

QUESTIONS submitted by the COMMISSIONERS, with the ANSWERS received thereto.

QUESTIONS.

1. Should the cost of obtaining Letters Patent be diminished or increased; if either, to what extent; and should the payment be made in one sum, or by annual or other instalments?
2. Does the present mode of obtaining Patents appear to you satisfactory? Is it your opinion that there ought to be a preliminary investigation of a more searching character than that which at present takes place? If so, how should the tribunal be constituted before which such investigation shall be conducted, and should the judgment of such tribunal be final?
3. Should the investigation be *ex-parte* or public and subject to opposition? Should the present practice as to caveats be adhered to?
4. Have you reason to suppose that public inconvenience is caused by the multiplicity of Patents.
5. Do you consider that Patents ought to be refused on the ground of the trifling and frivolous nature of the inventions for which they are claimed?
6. Should greater facilities be provided for the repeal of invalid Patents?
7. Do you consider that any change should be made in the tribunal appointed to try actions and suits instituted by Patentees?
8. Should the granting of licences in your opinion be made compulsory, and can you suggest any practicable method by which this should be done?
9. Do you think it expedient that Patents should be granted to importers of foreign inventions?
10. Do you think it expedient that Patents should be granted to foreigners residing abroad, or to their nominees?
11. Is it expedient to make any, and if so, what alterations in the law relating to prolongations and confirmations?
12. Is it expedient to make any, and if so, what alteration in the law respecting disclaimers and memoranda of alterations?

ANSWERS.

ANSWERS of the Right Hon. SIR JOHN ROMILLY, M.R.

1. I think that it is not desirable to diminish or increase the costs of obtaining Letters Patent, and I also think that the present system of payment should be continued.

2 and 3. I am unable to suggest any more satisfactory mode of obtaining Patents than that at present subsisting. I entertain no doubt that a preliminary investigation of a more searching character than that which at present takes place would be simply injurious. Such a tribunal, however constituted, must either act *ex parte* or subject to opposition.

If the preliminary investigation were *ex parte*, I believe that the investigators, however constituted, would always allow the Patent, and that it would become a mere form, creating delay and expense to the person requiring the Patent. If they did not, there must be some appeal from their decision to a higher tribunal; however this tribunal might be constituted, and however this appeal might be regulated, it would be very unsatisfactory. It must necessarily place the investigators (or judges in the first instance) in the situation of defendants. The ultimate decision, if in favour of the appellant, could bind no one afterwards contesting the validity of the Patent; neither do I see in what manner the costs of the inventor, and the loss sustained by him by the delay, could be satisfactorily provided for. If the tribunal were to act publicly and subject to opposition, it would either be inoperative, or it would create great expense, and be like an ordinary trial at law in the case of a contested Patent, without the same securities for a correct decision, unless such previous investigation were confined to the cases where some person had entered a caveat, in which case if a new tribunal were constituted to try Patents, as suggested in my answer to Query 7, I think it might be advisable to leave to such tribunal the determination of whether the Patent should or not be granted. If not,

I think the present practice as to caveats should be adhered to.

4. I believe that great public inconvenience is caused by the multiplicity of Patents, and that many Patents are taken out, which, if contested, would be found to be wholly invalid, and which yet are made the instruments of levying a tax in the shape of payment for a licence, and that many persons now prefer paying a small sum of money for a licence to incurring the expense and anxiety of legal proceedings to contest the validity of the Patent.

5. I consider it to be next to impossible in most cases to determine beforehand; and, until the invention has been put into practical operation, whether an invention for which a Patent is claimed is of a trifling or frivolous nature. I believe that the best and most experienced persons might frequently be mistaken, and form an erroneous judgment as to the value of an invention. The answer to this question also involves the difficulties which appear to me to arise on Questions 2 and 3.

6 and 7. I think that greater facilities should be provided for the repeal of invalid Patents. I think the trial of the validity of Patents by *scire facias* and a jury is very unsatisfactory, and should be discontinued. I think that the best mode of constituting a tribunal for this purpose would be by a trial before a single judge, to be assisted by an assessor, versed in the peculiar subject to which the alleged invention relates, taking the evidence *vivâ voce*; but I think that is not necessary or desirable to constitute a new Court for this purpose; the business would not be very onerous, and might well be discharged by any one of the existing judges, either of law or equity. It would not, I believe, occupy above 20 days in a year on an average.

8. I think the granting of licences ought not to be made compulsory, and, if it were, I do not think

that it would be possible to suggest any practicable method by which this could be accomplished without injustice to the patentee.

9 and 10. I think it highly expedient that Patents should be granted to importers of foreign inventions, and also to foreigners residing abroad, or to their nominees. Some of the most valuable inventions, and which have been productive of great wealth to this country, have been made by foreigners; and several of them, I believe, would never have been made, or at least not completed, but for the expectation of the inventor that he would derive great profits from a Patent to be obtained in this country.

ANSWERS of the Right Hon. LORD CHELMSFORD.

1. I have scarcely sufficient practical knowledge to enable me to answer this question. I know that the reduction of the price of a Patent, and especially the easy terms of paying by instalments under the Act of 1852, was regarded as a great boon to inventors. Whether the amount fixed upon, and the mode of payment, hit the exact points of not discouraging inventors, and at the same time of not tempting speculative men to venture at a small risk upon (what I may call) experimental Patents of doubtful novelty, which are likely to occasion litigation and expense to prior patentees I am unable to say.

2. I do not think the present mode of obtaining Patents is entirely satisfactory. I cannot suggest any mode by which the preliminary investigation can be better conducted than by the law officer, but I think it ought to be rendered more searching. With respect to the first hearing before the law officer, he is merely to satisfy himself that the Provisional Specification or Complete Specification (as the case may be), describes the nature of the invention. This is quite right, and the opportunity for a fuller investigation is not necessary until a later stage of the proceeding. But when the petition, declaration, and Specification are recorded in the office of the Commissioners, it ought to be made the duty of some officer there to search the register of existing Patents, to ascertain that no similar invention has been previously patented. If any previous Patent is found resembling the one in question, it ought to be brought to the notice of the law officer at the time when the application for Letters Patent is heard. Under the present system, the law officer has no means of forming an opinion as to the novelty of any assumed invention, except where there happens to be an opposition by parties who can supply him with the requisite information. This is frequently wanting, either because the title of the Patent applied for does not of itself suggest any interference with their own invention (whether patented or otherwise), or because they do not think it worth while to incur the trouble and expense of an opposition; and the result of this is occasionally a considerable amount of future litigation. I would confine the search in the office, and consequently the limits of the objection, on the score of want of novelty to existing Patents. It is they which appear to me to require the protection of the preliminary investigation. As to expired Patents, there seems to me to be no necessity to extend the inquiry to them. The applicant may be left to the consequences of having either wilfully or incautiously obtained a Patent for an anticipated invention.

3. It seems to me that great danger would arise to inventors if the examination were not conducted (as it is now) *ex parte* and in private. But persons who are interested in opposing the claim for a Patent ought to be heard. It is most desirable to prevent improper Patents being issued, and every facility, therefore, ought to be given to insure a full investigation. There appears to me to be no reason why, in addition to the advertisements, persons who are desirous of protecting themselves by the receipt of a particular notice should not be allowed to secure this by entering a caveat, as at present. This would seem to be especially necessary for persons who have not

11. It is not, I think, expedient to make any alteration in the law relating to the prolongation or confirmation of Patents. If, however, such a tribunal as I have suggested in answer to Query 7 were constituted, it would, I think, be desirable to vest the whole jurisdiction relating to Patents in that tribunal. If not, I think, it had better be left to the Judicial Committee of the Privy Council, as at present.

12. It is not, in my opinion, expedient to make any alteration in the law respecting Disclaimer and Memorandums of Alterations.

JOHN ROMILLY.

9th December 1862.

brought their inventions to the degree of maturity which would enable them to be patented, but which are sufficiently advanced to have embodied the same idea, which is proposed to be carried out by the applicant for a Patent. A search in the register may protect a prior Patentee from invasion, but nothing but his own personal communication of his invention can prevent an unpatented inventor being forestalled.

4. I have no ground for forming an opinion either way, as to the public inconvenience or otherwise occasioned by the multiplicity of Patents. No doubt, where inventions run close to each other, which must be the case as the field of invention is more and more occupied, litigation is likely to arise. But it is difficult to see how the multiplication of Patents is, with justice, to be prevented. One invention naturally begets another, and sometimes the improvement upon a prior invention is so minute and apparently trifling as to be obvious only to a scientific eye, and yet it may be productive of the most importantly beneficial results. I have no doubt that numerous Patents of machines for particular manufactures have occasioned great embarrassment in the trade to which they were applicable, but no public inconvenience has resulted from them.

5. I think it would be better not to require this exercise of judgment from the law officers. It would be a discretion always delicate and sometimes difficult. No line can be drawn and no settled rule established between the trifling and the useful. Law officers may differ in their estimate of the value of inventions, and their decisions might, therefore, be regarded, in some instances as capricious, in all as uncertain. It is not advisable, in my opinion, to change the present system. An invention which is apparently trivial, but really useful, might be rejected, whilst a trifling invention of no utility will be neglected by the public, and the patentee will alone bear the consequences of his idle and frivolous experiment.

6. I am not sure that I understand the tendency of this question. If, by the words "greater facilities," it be meant that proceedings might be instituted on behalf of the public to repeal invalid Patents. I am entirely opposed to such a suggestion. Patents are now attacked only by persons to whom they are obnoxious and for the sake of their own interests, whether by actions for infringement, or proceedings by *scire facias*. And the public interest is sufficiently guarded by leaving the matter in their hands. If they could not only instigate the proceedings, but be saved from the expense of it, great encouragement would be given to litigation and patentees would be continually harassed by vexatious actions; but if it be meant to inquire as to the practicability of introducing some more summary method of getting rid of invalid Patents than at present exists, I am unable to see my way in this direction. If a Patent is assailed, whatever may be the form of proceeding, there must in justice be a full inquiry (as now) by witnesses, and the result must depend upon the facts, or the law arising upon the face of the Specification. Only in this latter case might the opinion of a court be taken upon the

construction of the Specification without going through the expensive formality of a trial, though frequently even in these cases the judges might require the assistance of scientific witnesses to explain technical terms.

7. All persons who have any experience upon the subject seem to be agreed that the present mode of trial is extremely unsatisfactory. If the invention in question is of some complicated machine, or of some new chemical operation, the chances are that not one of the jury will understand anything of the subject. The judge himself may possibly be not possessed of scientific knowledge. The counsel (with some few exceptions) have in most cases to learn their lesson for the occasion. And the witnesses generally know more of the subject than the judge, the jury, and the counsel. As the inquiry is one usually more of judgment and opinion than of fact, there is always the contradiction between the witnesses ranged on each side which is almost proverbial in questions of this description. If, then, the point to be determined is the resemblance between two machines, the difference between which cannot be observed by a common eye, or the distinction between two equivalent chemical combinations, the probability is that the last word will carry the day; and it has more than once happened that the same Patent tested by an action for infringement has been held good, and has been afterwards set aside when impeached by *scire facias*, the patentee beginning his case in the action and his opponent in the *scire facias*, and each respectively having the reply. This advantage of the first and last word in cases of this kind has been considered of such importance that the legislature in the Act of 1852 provided that for the benefit of the patentee at the trial of a *scire facias* to repeal Letters Patent the defendant should begin, and if evidence should be adduced on the part of the prosecutor, should be entitled to reply. It is easier, however, to object to the present mode of trial, than to suggest a different one. Of course the idea of a trial by experts immediately occurs to everyone. The difficulty is how a tribunal of this description is to be constituted. Every Patent case would not require a jury of experts, but I think such a trial might be ordered by the court upon the application of either of the parties. When such a trial is granted the parties might be required to deliver in a certain number of names on each side, and out of these one of the masters of the court might select either by choice or by lot five, which I think would be a sufficient number to try the cause. The trial must always take place before a judge, as questions constantly arise upon the construction of Specifications and upon other legal points which must be determined by the court and not by a jury.

8. I see no reason for making the quantity of licences compulsory. The law gives the patentee a monopoly in his Patent right. It is his property, and he ought not to be controlled in his dealing with his property as he pleases. If he chooses to work the Patent himself exclusively, it is only doing what the law permits him to do.

9. It does not occur to me that there is any objec-

ting to granting Patents to importers of foreign inventions, especially since the 15 & 16 Vict. c. 83. s. 25. I think it would be right, however, to require notice of the intention to apply for a Patent to be given to the foreign inventor a reasonable time before the application; and if the invention has been already patented abroad, I should require the foreign Patent, with its date and the term of its continuance, to be stated in the English Patent, otherwise to be void.

10. The only inconvenience likely to result from grants of Patents to foreigners residing abroad would be upon any proceedings for the repeal of the Patents. With respect to actions for infringement of other Patents by the use of the foreigner's Patent here, they of course might be brought against the persons engaged for him in the manufacture. There would be nothing unreasonable in requiring a foreign resident abroad to take out his Patent here in the name of a subject of this country. It is a very common practice now for foreigners to obtain their Patents in the names of patent agents.

11. If Patents are to be encouraged, you must give the patentees a chance of a prolongation of their term, in case they have not been sufficiently remunerated for the merit of their invention. These cases seem to be very carefully considered by the judicial committee, and I am not aware of any ground upon which a change would be expedient.

12. I have a very strong impression that the indulgence of allowing a Disclaimer to be entered, or alterations to be made in a Patent after it has been sealed, ought to be restrained. The facility with which a Specification may be corrected at any time during the term of the Patent, gives rise to great carelessness, and even to boldness, in introducing claims the novelty of which may be doubtful, or which may embrace a great deal more than the party has a right to include in his invention. Many patentees, I am persuaded, trust to the eventual Disclaimer as their protection in the event of the impeachment of their Patent, and enjoy the benefit of the Patent right conceded to them till its invalidity is discovered. The case of *Seed v. Higgins*, 8, House of Lords Cases, 550, furnishes a good illustration of my meaning. In that case the patentee claimed every description of centrifugal force applied to flyers used in machinery for slubbing or roving cotton. Eight years after his Patent had existed he entered a Disclaimer, which converted it into a Patent for a particular machine. Although compelled to uphold the Disclaimer, I thought it a great abuse of the indulgence of the Legislature. It would be hard, however, to deny to patentees the power to rectify their Specifications which may have been framed in error, but there would be no great hardship in limiting the power of disclaiming to a certain time (say a twelvemonth) after the granting of the Patent. Occasionally an honest patentee might suffer from this limitation, but it would render persons more careful in the preparation of their Specifications, and would tend to prevent the insertion in them of claims of doubtful novelty by way of experiment.

Eaton Square,
12th December 1862.

CHELMSFORD.

ANSWERS OF SIR ROUNDELL PALMER.

SIR, Lincoln's Inn, December 17, 1862.

I HAVE the honour to acknowledge the receipt of your circular letter of the 1st December instant, forwarding a copy of certain printed questions, on which the Commissioners for inquiring into the working of the Patent Law are desirous of receiving the opinion of persons acquainted with the subject; and, in reply thereto, I have the honour to submit the following observations, as my answers to those questions.

1. I think that quite sufficient facility is given for obtaining Letters Patent, by the present law; and, while I am not prepared to recommend that the cost should be increased, I do not think it

desirable, on public grounds, that it should be materially diminished. The principle of payment by instalments has been found to work very well; and I see no reason for suggesting any alteration on this point.

2. Subject to the suggestions which will be found in my answers to the remaining questions, I do not see any reason for thinking the present mode of obtaining Patents unsatisfactory. I leave others to form and express their opinions as to the value and operation of that part of the present system which depends upon the supervision of the Law Officers of the Crown. But I am unable to conceive, how any satisfactory kind of preliminary investigation,

professing to be of a much more searching character, could be usefully applied to the great majority of applications for Patents. Even if an Officer were appointed to check all applications as a general opponent on part of the public, it is manifest that the investigation would still be, in a high degree, inconclusive and unsatisfactory. Such an Officer could not possess that practical knowledge on the vast variety of subjects over which those applications range, which would be necessary to make his opposition really efficient; and many questions must always be left open, (especially upon the cardinal point of novelty,) which no vigilance can anticipate until the alleged invention has been made public, and the experience and opposing interests of practical men have been brought to bear upon it. Without some such Officer a mere *ex-parte* investigation of the novelty of an invention, in unopposed cases, would be absolutely worthless; while, in opposed cases, it would never be safe to rely on the sufficiency of the knowledge and means of knowledge possessed by the particular objector, or on his good faith and perseverance in his opposition when favourable terms of arrangement might be offered. Any attempt to establish a new machinery for such a preliminary investigation must necessarily be cumbersome and expensive, and must much increase the cost of obtaining patents to the inventors. It would be open to the further objection, that, if the Judges were non-scientific men they would bring to the inquiry no knowledge of their own which could be trustworthy and adequate upon the question of novelty; and could therefore do no more in substance than is now done, or might equally well be done, by the Law Officers of the Crown; while, if they were scientific men, their practical knowledge on many subjects must still be limited, and they could hardly be altogether free (or at all events they might not have the credit of being free) from all bias and partiality, whether of an interested or of a disinterested kind; and under these circumstances their decisions could not be expected to command the confidence of inventors generally or of the public. On the whole, I think that any such investigation (unless its results were made conclusive of the validity of the Patent, which I presume nobody would propose) would be likely to prove oppressive towards inventors; while, on the other hand, I do not think it would really ensure to the public much greater security against improper Patents than is obtained under the present system, or might be obtained by such amendments and modifications of that system as may be found advisable.

3. If any such investigation were made, it ought, I think, in order to answer its intended purpose, to be subject to opposition. But I do not think it could be made public, without great risk of doing injustice to inventors, by the premature disclosure of the history and details of their inventions, while yet unprotected (and, possibly, not yet perfected); and, if the investigation is not to be public, I am unable to suggest a better mode of procedure for the purpose of giving opportunity of opposition, than the present practice.

4. On this subject I have no practical knowledge. But, *à priori*, I can hardly doubt, that some public inconvenience must be caused by the multiplicity of Patents, and especially by that class of Patents, which are taken out for inventions, constituting mere steps in the progressive improvement, development, or adaptation, of some art, process, or machinery, which is already *publici juris*, or which is the subject of a prior invention. Many of these steps are really nothing more than simple and obvious corollaries or consequences from that which was previously known; and I can hardly doubt that the power which the present law thus gives to any person who first moves forward, upon a path virtually open to all, of blocking up and obstructing the road against his fellow workmen and fellow inquirers, must be an impediment to the fair use by the public of the common stock of knowledge. Frivolous Patents, also, (whether valid

or invalid in law,) are likely in many cases to be productive of some inconvenience; if valid, because they give a monopoly to those who are not really discoverers in any worthy sense of the term; if invalid, because they may deter from the exercise of their legal rights that large class of persons, artisans, small tradesmen, and others, whose circumstances do not enable them to face the risk and expense of litigation.

5. I have a strong opinion, that Patents ought to be refused, (though under the law, as at present understood, the Law Officers of the Crown would not be warranted in refusing them,) on the ground of the trifling and frivolous nature of the inventions, for which they are claimed. I think it would be very expedient, if a discretionary power were expressly given to the Law Officers of the Crown, (or, if any other kind of preliminary investigation should be substituted for that now in use, to those who may conduct such investigation), to reject applications, on this ground. But, if such a discretionary power were given, I think it would also be expedient to guard it, in favour of applicants, by allowing an appeal either to the Lord Chancellor, or, (which I should rather prefer,) to the Judicial Committee of the Privy Council, who now decide on all applications for the prolongations of Patents.

6. I am disposed to think, that there might be some advantage in substituting, for the present mode of proceeding by *scire facias*, a more summary mode of proceeding for the repeal of invalid patents, by petition to Her Majesty in Council, to be referred (as of course) to the Judicial Committee.

7. I do not see my way to any useful change in the tribunals competent to try actions and suits instituted by patentees.

8. If the granting of licences were made compulsory, it would, I conceive, be necessary also to prohibit the granting of any exclusive licence; and if this were thought expedient, a condition might be introduced into all Letters Patent, obliging the patentee to grant licences, "upon reasonable terms," to all persons applying for the same; and any non-compliance with such condition might be made a ground for repealing the Letters Patent; thus constituting the Judicial Committee of the Privy Council (or whatever else might be the Court) the judges of what would be "reasonable," or "unreasonable" terms. I see no other mode by which the grant of licences could be made compulsory. My own opinion, however, is not in favour of the principle of such compulsion. There are cases, in which the best (perhaps the only) mode of developing an important invention may be, by the employment of a considerable capital, either by the inventor himself, or by a partnership or company, to manufacture the patented article; and an exclusive licence, or the exclusive control over the Patent, may be, in such cases, an indispensable condition, without which the risk could not be safely undertaken. On the other hand, it seems to me well worthy of consideration, whether (consistently with this view) some greater security, than at present exists, may not be taken, against the undue suppression of a patented invention, during the continuance of the Patent; and the best which has occurred to me is, to enable Her Majesty in Council, (i.e. the Judicial Committee), upon the petition of any person, to recall or repeal any Letters Patent, as to which it shall appear, on the evidence which may be offered, that the invention has not been brought into use within a certain period (say five years) from their date; and that such non-user has been wholly, or in part, owing to the unreasonable refusal of licences on the part of the patentees, or of persons claiming, by exclusive licence, &c., under them, or otherwise to their wilful default.

9. I entertain a strong opinion, that it would be better, and more consistent with sound principle, if Patents were never granted to importers of foreign inventions, not being themselves the first inventors, or their nominees acting on their behalf.

10. It seems to me right and proper, that Patents

should be granted to foreigners residing abroad, (being themselves the first inventors), or to their nominees on their behalf, as well as to Englishmen, and persons residing in England. This, however, should in my opinion only be done in cases in which the same inventions are also protected by privileges in the nature of Patents in the inventor's own country; and the duration of the English Patent should in no such case exceed that of the foreign privilege.

11 & 12. It does not occur to me to suggest any

alterations in the law relating to prolongation and confirmations, or to disclaimers and memoranda of alterations.

I remain,

Sir,

Your obedient Servant,

ROUNDELL PALMER.

Edward Lloyd, Esq.,
Secretary to the Patent Commission,
&c. &c.

ANSWERS of E. J. HUGHES, Patent Agent, Manchester.

1. The cost of obtaining Letters Patent ought to be decreased to such an extent as would meet the expenses of the Patent office, and that an annual tax of 5*l.* or 10*l.*, or a 50*l.* tax, at the expiration of five years, would be sufficient to clear the Patent lists of useless Patents.

2. A Court of Examiners should be appointed to report on every application as to *novelty only*, similar to the plan adopted in the United States of America; but if that plan should be adopted it would be absolutely necessary to dispense with Provisional Specifications, and deposit Complete Specifications on application for the Patent. I am also of opinion that whether examiners are appointed or not, it would be an advantage to dispense with Provisional Specifications, because in the first place every applicant is now obliged to risk patenting something that has been patented during the preceding six months; and secondly, the Provisional Specification is calculated to encourage litigation by raising the question of sufficiency or insufficiency of the Provisional, as is the case in every action tried for infringement.

If the practice of Provisional Specification be abandoned it would be necessary to allow Patents of Addition, at a small cost, as is the custom in France and other countries in Europe.

3. If examiners are appointed the investigation should be *ex parte*, with liberty for the applicant to appeal and the public to oppose; but in all cases of opposition both parties should deposit in court a sum of money sufficient to cover expenses, to be paid as awarded by the court. If opposition is allowed caveats must exist as at present.

4. I have no reason to suppose that the public suffer any inconvenience from the multiplicity of Patents.

5. I think it would be improper for any person to undertake the responsibility of saying what invention was trifling or frivolous. It would be tantamount to deciding on the utility of an invention, which no one can judge of so well as the inventor. In my experience I have known inventions which I considered very frivolous become very important and acceptable to the public.

6. If the expense of repealing a Patent could be reduced, it would be a boon to the public.

7. If a separate court could be established for the trial of Patent cases, it would be a great advantage; but in all cases juries should be selected who are likely to have some knowledge of the case they have to try.

8. Compulsory licenses might be allowed as far as using the invention, but not for making it; but I cannot understand how either case can be carried into practical effect, or how the royalty or compensation could be regulated compulsorily.

9. I think the present practice with regard to foreign inventions is just and reasonable. If Patents of importation were not allowed, the public would lose the advantage of many valuable inventions.

10. Foreigners residing abroad ought to be allowed to take their Patents either in their own names or their nominees', as is now the practice.

11. Instead of appealing to the Privy Council for prolongations, if a separate court were established, that court should have the power.

12. The present practice of obtaining disclaimers and memoranda of alteration is sufficiently satisfactory.

E. J. HUGHES, Patent Agent.

Manchester,

Dec. 19, 1862.

ANSWERS of EVAN LEIGH, Engineer, Manchester.

1. I am of opinion that the cost of obtaining a Patent is sufficiently low, but instead of the 50*l.* tax at the end of three years, I would place at the end of five years; and the 100*l.* tax at the end of seven years should be abolished, I think, altogether. My reasons for this alteration are, that three years is too short a period to test an invention fairly, and that the 50*l.* tax at the end of five years, would sweep away all useless Patents.

2. The present mode of obtaining Patents is on the whole satisfactory. Although a many useless Patents may be granted, the evil in a great measure remedies itself from want of public patronage. The tax of 50*l.* at the end of five years would do the rest. Should a Board of Examiners, however, be instituted, I am of opinion that all applications coming before them should be fairly scrutinized and judged on their merits as to novelty, &c., without the name of the inventor being disclosed. In doubtful cases, the inventor should be summoned before tribunal, to explain or show cause why his application should not be rejected.

3. I think caveats might be abolished.

4. I do not think the public sustain any inconvenience whatever from the multiplicity of Patents, as they do not prevent people using what was known before, and no one is bound to use a patented article; therefore a man only does so when he finds it to his own advantage. Even frivolous and unsuccessful Patents that die away, throw each their quota of light

on sciences, which in the aggregate benefit the public, and keep us, as a nation, in advance of the rest of the world.

5. I think a Patent should only be refused when there is evident want of novelty, or palpable infringement of others.

6. When a Patent can be clearly shown to be invalid, I think every facility should be given for its repeal.

7. The want of a proper tribunal to try actions and suits in Patent causes is much felt. I would have such actions tried in our ordinary local Courts by a special jury, composed of men who thoroughly understand the subject. From their decision there should be a right of appeal to a Patent tribunal, sitting in London, whose decision should be final. This tribunal should be composed of 12 men, eminent for their mechanical knowledge, and acquainted with Patents, to act as jury. They should each have 1,000*l.* a year, and be selected from decayed or unsuccessful inventors. Two of their number should retire annually and finally, in rotation, and others be elected in their places by the votes of the jury themselves, who might each propose a candidate. All candidates to send in certificates, or other evidence of fitness, before the day of election. The judge, and other officials, to be also stipendiary. If Patents are to be placed within the reach of the poorer class of deserving inventors, which I consider a national benefit, the boon should by all means be accompanied

with a cheap, speedy, and certain method of determining infringements.

8. The granting of Licences cannot practically be made compulsory.

9. I think Patents should be granted to inventors only.

10. I think Patents may be granted to foreigners,

residing abroad, through an agency, but not to their agents.

11. No.

12. No.

EVAN LEIGH, Engineer.

Miles Platting,
Manchester.

ANSWERS of PETER J. LINSEY, Patent Agent, Manchester.

In answer to the questions on the other side, I am of opinion that Patents should be granted to all applicants on demand, that is, six months' Provisional Protection should be given on deposit of a petition, declaration, and Provisional Specification. I am of opinion that all examinations by the Law Officers and the opposition stage should be abolished, and that the warrant and seal should be issued on the demand of the applicant made one month before the expiration of Provisional Protection.

The present examination by the Law Officers and the opposition stage is well-known to be entirely useless, as ninety-nine per cent. of the applications which go to the seal are never modified or affected by those formalities, and when an opposition does occur the Law Officers seldom stop the issue of the Patent, however good the case may be against the grant, as they are afraid they may injure the applicant without leaving him any remedy, if they refuse the Patent, while the opponent (they say) has his remedy by an action to repeal the Patent when granted.

In my opinion, the first cost of Patents should be reduced as much as possible, because applicants require professional assistance, and have to incur considerable expense in drawings, experiments, &c., and this is enough without an excessive amount of stamp duties. I would propose the sum of one pound as the stamp on the petition (except in the case herein-after mentioned), and the sum of five pounds for the stamp as at present on the final Specification; these sums would about cover the Patent office expenses for printing, &c. But I should retain the present third and seventh years' stamp duties as the best and simplest means of repealing (or "weeding out") Patents for worthless and unworked inventions.

I would not have any search or investigation prior to the grant of a Patent with the view of deciding whether or not the Patent should be granted, because it would be almost impossible to get through the business and give satisfactory decisions; and because the applicants for Patents would, as they do now, save all this trouble, as it is well known that a great number of applications never go to the seal, and of those which pass that stage a very large number fall at the third and seventh year, and thus the applicants and Patentees execute judgment upon the merits of their own inventions, and it is better that it should be so.

In my opinion a special tribunal should be formed for trying the validity of Patents, and if found invalid for repealing them, for trying actions for infringements of Patents, for granting or refusing disclaimers and memorandums of alterations of the Specifications of Patents, and for granting or refusing prolongations of the term of Patents. The rules of such tribunal to be arranged with the view of reducing the excessive cost of such proceedings as at present conducted. But though I am

against any preliminary investigation to decide whether a Patent shall be granted or not, I am in favour of the appointment of a number of examiners, whose duties shall be to make themselves acquainted with the Provisional Specification which accompany each application, and to make a search to see if any previous Patents have been granted on the same subject, and bearing upon the invention described in the Provisional Specification; then the Specifications of such Patents shall be pointed out to the applicant as early as possible, or within one month from the time of recording the petition, and the information so given by the examiners shall not be made public as against that application till the expiration of the term of provisional protection.

It is well known to all persons having experience in actions for infringement of Patents that the main question is generally one of novelty, and in many cases either the Patent is defeated or never goes to trial, owing to the want of novelty, as shown by the Specifications of previous Patents put in by the defence, of which the Patentee was previously ignorant. It is well known that many Patents are applied for in ignorance that Patents have already been granted for the same Invention.

Now if a search was made by examiners as proposed, a far less number of Patents would go to the seal than at present, and those which did go would have the claims of the Specification more perfectly defined, and the public would be able to form an opinion as to the novelty of the inventions for which Letters Patent were obtained, by referring to the report of the examiners. If a board of examiners was appointed, as suggested, then I would let the stamp on the petition remain as at present, instead of one pound only as previously suggested, so that the applicant would pay for the cost of the search by the examiner.

The tenor of my answers to questions Nos. 4 to 8 will be inferred from what has already been stated; but in reference to No. 8, I should leave the question of granting licences as at present, but in case of obstructive Patents, I would give power to the special tribunal herein-before referred to (on a petition to that effect) to compel a patentee to show cause why he should not be compelled to grant licences, and if he did not succeed in showing a sufficient and satisfactory reason, then the court should have power to compel him to grant a licence on terms to be decided by the court.

I would suggest also, that it would be a great facility if the Patent office would arrange so that business in application for patents might be transacted through the Post-office, same as it is in the office for registering designs.

PETER J. LINSEY, Patent Agent.

24, Queen's Chambers,
Market Street, Manchester.

ANSWERS of the LEEDS CHAMBER OF COMMERCE.

1. This Chamber thinks that no material advantage would be gained by any change in the present system.

2. The Chamber thinks the present system on the whole satisfactory, but would propose that a legal and permanent officer should be appointed to perform the duties now intrusted to the Attorney General.

3. The Chamber has seen no satisfactory scheme for a public investigation, and thinks that there are many objections to it. It would recommend that the present system of caveats should be adhered to,

4. Some inconvenience arises from the multiplicity of Patents, but no practical remedy for this particular grievance suggests itself to this Chamber.

5. The Chamber does not think it possible to get a tribunal satisfactorily to decide whether inventions are of a frivolous nature or not.

6. Does not think it practicable, except so far as the general improvement of the law might effect it.

7. The present mode of trying Patent cases is very unsatisfactory. The Chamber would recommend that

the jury should be dispensed with, and the case left with the Judge, assisted by scientific assessors or experts appointed by the Court.

8. The Chamber thinks that the granting of licences should be made compulsory only in cases where the party applying for the licence can show that his business or trade is materially injured by his not having it, and especially where the Patentee cannot prove himself in a position to carry out his own Patent efficiently.

9. No.

ANSWERS by the CHAMBER OF COMMERCE, HUDDERSFIELD.

1. We consider that the cost of obtaining Letters Patent should be diminished to such a sum as will cover all expenses of the Patent Law establishment and administration, and that no burden beyond this ought to be imposed on inventors. The present mode of instalments needs no alteration, in our opinion, if the amounts be reduced as stated.

2, 3. We find no fault with the present mode of obtaining Patents. There are considerable difficulties connected with the establishment of a preliminary investigation, which, in the opinion of this Chamber, would outweigh any advantage to be derived from such investigation. This Chamber therefore does not approve the scheme of any preliminary investigation, public or private.

4. The inconvenience referred to appears to be felt not so much by the public as by subsequent Patentees. To assist such there should be the best possible system of indexes of Patents, disclaimers, prolongations, confirmations, and of legal decisions affecting Patents.

5. We consider that the risk and cost incurred by the inventor are the true check against frivolous Patents, and that nothing else should be imposed which might discourage invention or improvement.

6. Yes.

7. In our judgment it would be a public advantage if a special Court were established for the transaction of all contentious Patent business, with a salaried judge, similar to the Probate Court, and with an appeal to a higher Court. This would greatly facilitate and reduce the cost and delays at present

10. Yes.

11. The Chamber approves of the present system.

12. No other alteration is suggested but that the inventor should have power to disclaim his provisional specification and begin *de novo* at any time before the expiration of six months, the inventor, of course, losing priority, and such disclaimed specification not to be published.

On behalf of the Chamber of Commerce, Leeds,
DARNTON LUPTON, President.

incurred in Patent cases. The salaries and expenses of such Court should be provided for by fees on Patents.

8. We consider that after the third year of the Patent the granting of licences might, with public advantage, be made compulsory in cases where the Patentee does not work the Patent in a beneficial manner. The amount of licences' fees in such cases should be adjusted on terms equitable to the Patentees, and, if not agreed between the parties, might be settled by arbitration or by jury under the supervision of the Patent Court.

9. Only to the inventor or Patentee himself, and not to agents.

10. On terms of mutual advantage, we think that international arrangements for granting of Patents might be productive of good.

11, 12. These matters should be transferred from the tribunals which at present take cognizance of them to the special tribunal for Patent cases. No other change seems requisite.

The costs of the trials of Patent causes are a great grievance and burden. It would be well if, amongst other improvements, the double fees payable to counsel in Patent cases were abolished. With the facilities afforded by the establishment of a special tribunal there should be sufficient business to make the ordinary fees a remuneration sufficient for the special knowledge required to be cultivated by the advocates who practise in such Court.

THOS. P. CROSLAND, Vice-President.

ANSWERS from the CHAMBER OF COMMERCE, NOTTINGHAM.

1. There is no reason for altering the existing law as regards the costs of obtaining Patents.

2. The Council would not interfere with the present mode of obtaining Patents, and does not know of any satisfactory tribunal that could be appointed for preliminary investigation.

3. See 2, above.

4. Not public inconvenience but trade inconvenience.

5. No.

6. No.

7. It is very desirable that some change should be made.

8. The granting of Licences should be optional.

9. Yes.

10. No; unless the Invention is worked in this country.

11. No.

12. Every facility should be given for Disclaimers.

ABSTRACT of ANSWERS from MEMBERS of the CHAMBER OF COMMERCE, BRADFORD.

By J. LISTER, Esq.

1, 2, 4, 5. The first payment, upon sealing the Patent, should be increased to 50*l.*, with a further payment of 50*l.* at the end of three years; thus the number of applications for frivolous Patents would be checked. On the other hand, the present system is virtually a tax upon good Patents for the support of those which are bad. This would probably not stand in the way of poor inventors. At any rate it would be the lesser of two evils. The evil of a multiplicity of Patents must be diminished, and that can only be done by the method above suggested or by a preliminary examination by a special commission. Any such latter plan is highly objectionable; it would result in great injustice to inventors; no commission could be relied on to estimate the utility of an invention. For instance, in the case of *Lister v. Leather*, the jury, directed by Lord Campbell, after a long and searching investigation, decided that the plaintiff's Patent was bad because his machine was exactly like Heilman's. Now Heilman's machine has been public

property for several years, and no one will buy it, while manufacturers will pay a royalty of 900*l.* for the use of Lister's; experience thus showing that the former invention is worthless, the latter very valuable, while the decision of the Court was that they were exactly alike.

7. The present mode is, no doubt, expensive, but on the whole substantial justice is done. I succeeded in three actions at law as plaintiff, and failed once as defendant, and believe that the result was correct in each case. A trial by a jury of experts is highly objectionable. Any advantage gained by their acquaintance with the subject is more than balanced by their prejudice and personal interests. On this account, in the second trial of *Lister v. Leather*, I had the *venue* removed to Chelmsford, as I felt that with a jury of persons acquainted with the wool-combing trade neither facts nor arguments would have produced any effect on preconceived opinions.

By JAMES HOLDEN, Esq.

1. The present cost and mode of payment cannot be much improved.

2. A preliminary investigation is desirable by a tribunal composed of independent, scientific, and legal judges, whose decision should be subject to appeal, by the patentee, to the tribunal referred to under No. 7.

3. The patentee should be heard, with or without counsel. An opposing party should pay all real costs, and heavy damages, if he fail to obtain refusal of the Patent.

4. The public and inventors suffer from a multiplicity of crude, impracticable, valueless, "soi-disant," inventions.

5. Yes; if *proved to be trifling* and frivolous; but it would be no easy matter to prove some so which might appear so at first sight. Sometimes a very trifling change or improvement is attended with most important results to a whole trade.

6. The tribunal referred to under No. 7. might usefully be applied to for a judgment in *scire facias*, subject to appeal, as in cases where a Patent is refused.

7. A special tribunal or tribunals in London should be constituted to try patent cases of infringement; and in "*scire facias*,"—patentees to be heard by or without counsel. Such tribunal should have power to grant injunctions and assess damages.

8. Every patentee should either work or sell his invention within three years of date of Patent, unless he have *several inventions* and give the trade the benefit of *his best*, and unless he show satisfactory cause of *delay* to tribunal No. 7, who may *extend* the time *indefinitely*, and if need be grant a prolongation, in order to work profitably.

9. No; to none but inventors.

10. Yes; decidedly, to either.

11. Facilities of obtaining prolongations and confirmations to meritorious inventions should be granted, so that the inventor, or those to whom he has ceded his rights, may be able to obtain sufficient remuneration from the public.

12. All reasonable facilities should be granted to alter or disclaim; and also I would suggest the propriety of allowing "*additions*" to be made to a Patent to perfect and complete it; but up to that time any one who can prove its impracticability may bring an action in *scire facias*.

N.B.—What is wanted *more than ALL THE ABOVE is, 1st, a full, clear, and plainly written law of Patents*, so that any man of ordinary ability and learning may understand it; and, 2ndly, an easy and expeditious judicature for judging Patent causes.

W. ECROYD and SONS.

1, 2, 3. I think it questionable whether the mischiefs and public inconveniences arising from the system of Patents do not far outweigh any advantages or rewards which they secure to *bonâ fide* inventors. They work mainly for the benefit of a special class skilled in the litigation connected with them.

4. I consider that great inconvenience is caused to the public by the multiplicity of Patents.

5. It would be much better, in my opinion, that Patents should only be granted in the case of manifest and important inventions.

6, 7. Unless a jury skilled in the matter to which the Patent applies can try each cause great injustice may, and doubtless does, result.

Most of the Patents taken out during the past 10 years for inventions of a mechanical character, and which we have tried in our works, are perfectly worthless in our opinion, and we believe they have been obtained in many cases for the sake of the profit realizable on the number of patented articles *which could at once be disposed of simply for trial*; at least it is difficult to come to any other conclusion.

As an instance of the mode in which the present law is abused I can mention a case in which certain machine makers of Blackburn took out a Patent, dated 26th May 1862, for improvements in weaving looms and winding engines. Their Specification embraces an alteration which my firm had applied in looms made by us, sold and delivered in February and March of the same year; other machine makers have made a previous use of the same invention; yet these parties intimate an intention to claim a royalty in all the cases. In many instances they will, no doubt, succeed, from the unwillingness of the parties to spend their time and money in conducting a law-suit, or from ignorance of the facts.

G. H. LEATHER, Esq.

1. I think the law as at present satisfactory on this point.

2, 3, 4, 5. If a plan could be adopted for referring every Patent to a committee, say, of three persons, connected with the branch in which the Patent is sought, and a notice given to the public interested, of the nature of the invention, and a certain time allowed for any party aggrieved to give notice of opposition, and the *grounds*, then let both parties appear before the committee; this might prevent many useless Patents being taken out and much after litigation; the decision of the committee to be final. No opposition to be allowed excepting on the ground of a previous Patent, or that the party was at the time working or had published the invention openly, so as to make it public property.

6. Yes.

7. All trials for infringement of Patents should be tried in the county where the infringement takes place, and the jury should be constituted, one half of persons in the trade itself, and the other half of persons connected with that business; as, for example, in a combing Patent, six should be spinners, and the other six mechanics.

8. Yes.

9. No.

10. Yes; to the real inventor or his nominee.

11. No prolongations should be granted.

12. No Disclaimer should be granted to any Patent. When the patentee has brought an action against another party, or had an action brought against him, for infringement, and been beaten on the ground of infringement, that Patent should be considered and declared void.

ANSWERS by M. HENRY, Esq.

Having been requested to reply to the questions of the Patent Law Commissioners, I beg respectfully to submit the following answers thereto:—

1. I think the present cost of obtaining Patents proper in amount, and distributed in convenient instalments. Payment by instalment is judicious, but annuities would be inconvenient; they would increase the risk of unintentional forfeiture of Patents by circumstances, such as absence, illness, or temporary embarrassment of patentee. The system of annuities adopted in France is considered unsatisfactory in that country.

2. I believe the present mode of obtaining Patents satisfactory on the whole, with some few exceptions in detail. I do not conceive that any advantage would result to inventors or the public by preliminary investigation into novelty or utility. The Patent Office records afford patentees the means of ascertaining the novelty of their inventions as far as that can be deduced from prior Specifications. But as want of novelty is not solely traceable to prior Patents (as seems to be assumed), but frequently to prior publication, by books, practice, or sale, no system of examination can ensure novelty.

Men of intelligence and experience may differ on questions of novelty, utility, interference, and substantiality of improvement. Such questions are sometimes ventilated for days in law courts before a result can be attained, and this after an invention has passed from provisional description to the maturity of detailed specification and practical application. All inventions do not consist of broad principles, nor can they be enunciated by sharply defined statements.

An inquiry into the importance and novelty of an improvement often demands the evidence of skilled witnesses and experts; these are sometimes sceptical or mistaken, nor could they be bound to requisite secrecy.

The existence of an investigating Commission in America has not prevented Patent litigation in that country, whereas in France, where there is no inquiry, Patent property is respected and sought after.

Eminent lawyers, and not scientific professional men, seem to be the fittest authorities to control the issuing of Patents. The latter, however conscientious, have not unfrequently scientific partialities, and professional proclivities; whereas a lawyer brings to the consideration of the subject a mind educated, mathematical, trained to reason, and probably unbiased on technical or industrial questions.

But though the applicant has access to filed Specifications, he has no means of comparing his invention with others during the provisional protection of the latter; this is a special disadvantage, for it often happens from the requirements of the time that numerous Patents are demanded for one subject about the same period. This might be remedied by subjecting Provisional Specifications to a comparison with those not yet specified, the Law Officer conducting the examination, as now in opposed cases. If the interference were palpable, the latter application might be stopped; but if it were open to question, both might be allowed to proceed, leaving the ultimate decision to open tribunals.

For the reasons adduced, I think that the decision of an investigating board, however constituted, should not be final.

3. A public investigation would expose an applicant to the risk of losing all foreign Patents for his invention.

4. There seems no reason for supposing that multiplicity of Patents is a practical inconvenience to the public; the occasional complaints of individuals must not be taken as the public voice. Multiplicity of Patents arise from fertility of human ingenuity. The discouragement of such ingenuity might check its development, and occasion more public mischief than a few useless Patents. In France and America, where Patents are more numerous than in this country, they are, I believe, rather popular than otherwise.

5. I think that presumed triviality of subject-matter offers no ground for the refusal of a Patent. It is impossible to determine a standard of triviality; on this point opinions may differ, what may appear trifling to some may be important in practical result.

I submit that Patents for frivolous subjects are not mischievous, they injure none, but benefit many, for they benefit the revenue, and especially the community of inventors, because their costs swell the fund that enriches their library and museum; they do not injure the patentee, or he would not seek them, nor the public, who are free to adopt or neglect them. On the other hand, they often afford an impetus to trade by bringing a new article into the market, and by furnishing work for unemployed hands; advantage that might not be attained were the inventor deprived of the encouragement of Patent right.

6. Were additional facilities afforded for repealing Patents, litigation might be most unpleasantly increased.

7. Yes. By establishing a Patent (and Copyright) Law Court, presided over by a Patent-law Judge, and attended by selected juries, whose minds would be habitually directed to the consideration of inventive and intellectual property, and the progress of the arts, and who should be chosen for suitable qualifications. This, by organizing the application of jurisprudence to the useful arts, would simplify and expedite the consideration of Patent cases; establish decisions on a regular basis, and place Patent rights on a surer footing. Lists of men competent as Patent jurymen might be readily furnished by such institutions as the Society of Arts.

8. The difficulty as to licences might be partly met by importing the provision of the French law, rendering Patents invalid if not used or worked within a certain time, but with this addition, viz., the granting of (*bonâ fide* not colourable) licences to be considered as a sufficient using or working of the Patent.

9. Believing a Patent to be a public advantage I think the fewer the restrictions to the qualifications of patentees the better. The primary object of a Patent is to encourage new manufacturers; the recompense of the inventor is subsidiary. The introduction of foreign inventions tends to enrich the arts with improvements to bring new articles into the market and open new channels of labour. Few men deserved better of their country than did Lombe, the importer of a manufacture by which thousands have earned their bread.

10. I think foreigners abroad should have the right of taking Patents here, since most foreign countries concede a corresponding right to Englishmen. But they should also have the right of appointing nominees; delay and inconvenience to the foreigner would arise were Patents of communication abolished, our law requiring the deposit of papers which the applicant must sign personally.

11. The law of confirmations and prolongations is, I think, in principle correct, but I submit that if a Patent-law Court were established these decisions might be transferred to it.

12. Sufficient facilities are not afforded for the entry of Disclaimers and Memoranda of Alteration. There is no advantage, public or personal, in putting the applicant to the cost of advertisements, save of one in the *London Gazette* (to be transferred to the *Commissioners Journal*). An applicant for a Patent is not required to advertise his intention otherwise.

Since the privilege of further suggestion is kindly accorded, I would add that,—

In any revision of the Patent law a provision should be introduced for allowing Disclaimers in, and Memoranda of Alteration of, the Provisional Specification and title during provisional protection. If an inventor, while availing himself of the advantage of his provisional protection to ascertain the novelty of his invention from printed records and the trade, should find a portion of such invention forestalled, there is no statutory remedy for the largeness of his Provisional Specification. The Law Officer on payment of proper fees should allow at his discretion the entry of Disclaimers and Memoranda of Alteration in Provisional Specifications and in the Titles during provisional protection (not extending the invention they describe). An important improvement would be a provision for entry of caveats against recording assignments, coupled with a provision for permissive registration of undertakings to assign, *before* the sealing of Patents. The present arrangements are insufficient to protect purchasers of patent property.

M. HENRY.

84, Fleet Street, London,
March 20, 1863.

ANSWERS and OBSERVATIONS of Mr. JOHN POTTER, C.E.

1. How far the cost of obtaining Letters Patent for inventions might with propriety be reduced, it is difficult to say, and can only be learnt by experience. The 100*l.* stamp at the end of the seventh year is, however,

an oppressive tax, and ought to be abolished. The time for the payment of the 50*l.* stamp should be extended from the third to the fifth year.

2. A preliminary investigation of a more searching

character than is at present practised would be advantageous, provided it were simply admonitory and for the information of the applicant. If it went further than this it is conceived that it would not be satisfactory.

3. The present practice of caveats is on the whole advantageous and proper. But the hearing, in case of opposition, it is conceived should (in justice to all parties) be private.

4. Have no reason to suppose that public inconvenience is caused by the multiplicity of Patents.

5. It is impossible to say at the outset what inventions are trifling and frivolous.

6. Greater facilities for repealing invalid Patents might be advantageous. A system somewhat similar to that suggested by the writer in the annexed remarks, for the purpose of compelling the amendment and explaining of defective specifications, might perhaps be found to answer.

7. On this point the writer refers to the remarks below.

8. It seems only fair that any of Her Majesty's subjects should have the privilege of using a patented invention on paying a fair royalty for the same. In cases where the Patentee's demands are alleged to be exorbitant, a committee or jury might be empowered to settle and determine the proper amount to be paid, as suggested in the annexed remarks.

The difficulties which have arisen in the administration of the present Patent Law are mainly owing to the want of a correct definition as to what constitutes an invention, or rather a patentable invention.

It has been laid down as a maxim that there cannot be a valid Patent for a principle. But the word principle is here to be restricted to mean either simply an idea, or the original principles or properties of matter. These last may be classified in the following manner.

1st, Mechanical ; as hardness, softness, strength, elasticity, solidity, fluidity, &c., which may be more or less characteristic of the substance or matter spoken of.

2nd, Mathematical ; as the properties of the lever, wedge, screw, &c., also circular, rectilinear, or reciprocating motion, &c. &c., which are dependent simply on the *form* of the substance or matter made use of, and not generally or necessarily on its other properties, provided it be strong enough for the purpose.

3rd, Chemical ; embracing the affinities which different substances have for each other, including the effects of heat, &c. &c.

Now it is maintained that an invention consists in the combination of at least two (but generally a great many more) of the original principles or properties of matter, so as to produce a result beneficial to the public, and it is this combination of simple principles which constitutes the principle of the invention. It may be proper to remark here, that the combination of two or more of the natural principles or properties of matter so as to produce a result necessarily constitutes it a *manufacture*.

If this explanation be admitted as correct, it will follow of course that in the specification of a Patent the principle of the invention should be clearly defined. If it is not, the public will be left in the dark as to the extent of the monopoly created by the Letters Patent.

In some specifications no distinct claim is made defining the absolute or critical points on which the operation of the invention depends.

The question arises as to what meaning is to be attached to such a specification ? It is maintained that in fairness it can only mean the machine or apparatus exactly as described, and that if by taking away a portion of the machine the same result were still obtained, such mutilated machine, or part of the original machine, would be no infringement of the Patent ; because if it were, it would be clear that the public had not been warned as to the true nature of the invention, which they are entitled to be, and that consequently the Patent would be void from a want of compliance with the terms of the grant. It is further submitted that under a similar specification, if a portion of the original machine were left out and a new piece introduced in

place of it, the machine so altered would be no infringement of the Patent.

In a second class of specifications a claim is introduced claiming as new a certain machine or apparatus, as shown in the drawings, and described, without pointing out in what the novelty consists, that is, what new part, or new combination of parts, has been introduced in order to produce the result.

The objections made to the specification described in the last paragraph would apply with equal force to the present one. But there is another objection, which is, whether a machine constructed to produce the same results, but in which the original arrangement is left out, and a system of mechanical equivalents introduced instead, would be an infringement. It is maintained that it would *not*, unless a proviso had been introduced into the specification expressly for the purpose of claiming the substitution of mechanical equivalents simply as variations of the original invention.

On the subject of mechanical equivalents it may be observed, that an original machine calculated to answer a certain purpose is usually a very complicated affair. In process of time mechanical equivalents are introduced instead of some of the original motions. Such equivalents are chosen as will combine better together than the original motions, and a great simplification of the machine is the result.

The immediate effects of such a simplification are, first, less original cost of the machine ; second, less wear and tear ; third, less liability to derangement ; and fourth, generally less mechanical force required to keep the machine in action. Such improvements are consequently proper subjects for Patents ; but it is evident, nevertheless, that the original Patentee should be protected, but how this is to be done, unless some provision is made for the contingency in the original specification, it is sometimes difficult, if not impossible, to find out.

Other defects, such as ambiguity and want of clearness, frequently occur in specifications, and such defects are commonly accidental, but sometimes done purposely, in order to attain some particular end.

It will be agreed, it is presumed, that owing to the vast number of Patents which are at present obtained, and many of which clash with each other, that a stricter system with regard to specifications should be established, in order that each individual inventor may enjoy the protection to which he is justly entitled without encroaching upon what properly belongs to other inventors or the public at large. To attain this object it has occurred to the writer that the following process might be found beneficial, if not absolutely sufficient, for the purpose.

First, that any of Her Majesty's subjects who might consider that the specification of an existing Patent was not sufficiently definite or was ambiguous in its language, should have the power of lodging with one of the law officers a list of the objections he had to make to the specification in question, accompanied by interrogatories as he might think proper, and also by a copy of the specification. If the law officer should be of opinion that the objections were well grounded, then he should require the Patentee to state his reason (if he had any) why he should not be required to amend and make more definite the language of the specification. If, after the hearing, the law officer should be of opinion that the objections to the specification were valid, then he should issue a precept to the Patentee requiring him to amend the specification within a reasonable time. Second, if the Patentee should neglect to obey the precept, then the party considering himself aggrieved should have the power of applying to the Lord Chancellor. If, after having heard both parties, the Chancellor should be of opinion that the objections were valid, then he should issue his injunction to the Patentee requiring him to amend his specification within a reasonable time ; and if the Patentee should neglect to comply with the injunction, then the Chancellor should have the power of suspending the privileges and monopoly granted by the Letters Patent until such time as the Patentee thought

proper to comply. The effect of this would be that the Patentee could not sue at law for any infringement of his Patent committed during the time of the suspension.

It is suggested that some such process as the above would have the effect of greatly reducing the amount of litigation which is constantly going forward in respect of Letters Patent, and which it is desirable should be reduced.

It must be observed that Patents are not unfrequently obtained simply for the purpose of securing to the Patentee the privilege of using his own invention; that is, by publishing the invention to prevent another person who might subsequently make the same invention from obtaining a valid Patent for it, and by that means interfere with the business or occupation of the original inventor. Others might not think it worth the while to support their Patents by appearing before the law officer as described. In these cases the suspension of the Patent privileges by the Chancellor would afford sufficient protection to the public.

By the Act 5 & 6 W. 4. c. 83., the Act 7 & 8 Vict. c. 69., and by the Patent Law Amendment Act, 1852, liberty is given to a Patentee to amend his specification under certain restrictions; but how seldom do we find Patentees availing themselves of the power thus conceded to them, except when some advantage peculiar to themselves is to be obtained? But why should they not *be compelled* to amend their specifications when the language employed is indefinite, has a want of clearness, or contains some ambiguity? Justice to the public at large, but more particularly to other inventors, seems to demand that a power of compelling amendment in such cases should exist in some quarter or other.

It has been suggested that a provision should be made for the purpose of fixing the amount of royalty to be charged for the use of a patented invention. Inventors have generally very extravagant ideas as to the value of their inventions, and hence fix the charge for royalty so high as not only to restrict the use of the invention, but also ultimately to injure themselves. A power to regulate the amount to be paid for royalty, to be vested in some committee or otherwise, would, it is

conceived, be of great advantage not only to the public at large, but also to inventors themselves, and have in other respects an indirect advantage in reducing the amount of litigation which is constantly going on in respect of patented inventions.

In my opinion the amount paid for stamps on Patents should, in justice to inventors, be reduced. The term of three years is, in many cases, too short to enable an inventor to make substantial progress with his invention. It is proposed that the term for the payment of the 50*l.* stamp should be enlarged from three to five years, and the payment of the 100*l.* stamp abolished altogether. It is submitted that by these means the advantages of the present system would be retained, and at the same time Patentees relieved from what really appears to be an unjust and unnecessary tax.

For the purpose of trying Patent cases, it is proposed that a number of individuals eminent for their scientific and practical knowledge, and residing in various parts of the kingdom, should be nominated as eligible, and their names placed on a kind of special jury list. From this list the law officer would select 12 to 20 names, which number should be further reduced by the objections of the plaintiff and defendant to four or six. These should form the jury, and with a judge or law officer appointed for the purpose, should constitute the court, which might adjourn from time to time until the case was thoroughly sifted. The judge or law officer to have a casting vote in cases where the jury were equally divided. No appeal from the decision of the court should be allowed, except in cases of alleged misdirection on the part of the judge or law officer. By this means it is presumed that speedier and more substantial justice would be rendered than under the present system.

The appointment of a vice-chancellor for the purpose of attending entirely to Patent cases would relieve, in some degree, the other Chancery Courts, and be beneficial to patentees by expediting the administration of justice.

JOHN POTTER,
Civil and Consulting Engineer.

4, Old Millgate, Manchester,
March 5, 1863.

ANSWERS and OBSERVATIONS of the SUB-COMMITTEE of the HALIFAX CHAMBER OF COMMERCE, adopted and confirmed at a Meeting of the Council held February 28, 1863.

By EDWARD AKROYD, President.

1. The cost of obtaining Letters Patent should be adjusted to such an amount as will cover the expenses of the Patent Office and of the officials connected therewith, and of the special court herein-after suggested, and the cost should be paid by a fixed sum on the application for the Patent, a further fixed sum on the grant, and a fixed sum annually during the existence of the Patent.

2. No. Protection for six months ought to be granted to all applicants as at present, but a strict investigation ought to be made afterwards by a qualified staff of examiners as to the novelty of the invention, giving a report to the applicant of the result of their investigation within two months from date, the applicant being still at liberty to complete the Patent or to abandon his application.

3. Ex-parte in the first instance, but subject to opposition to prevent fraudulent applications being granted, in which case the hearing should be in public.

4. Yes, under present arrangements, but such would not be the case if greater facilities were provided to enable the public to ascertain what is patented, and what Patents have become invalid from any cause.

5. No. The applicant should be the best judge, as he alone incurs expense.

6. Patents ought to be repealed when rendered invalid or void, and a list of such published periodically, at least once a year, stating the reason of their be-

coming void, in order that the public may know which Patents are valid.

7. Yes; there ought to be one or more judges appointed for the express purpose of trying Patent causes, who should be assisted by scientific experts. The cost might be defrayed out of money received for the granting of Patents. The decision of such judge should be final.

8. If the Patent be worked by the Patentee himself, then the granting of licences should be optional with the Patentee; but if not worked within two years from the granting of the Patent, then licences to be compulsory, or otherwise the Patent to be repealed.

9. Yes, with the sanction of the foreign Patentee.

10. Yes, to either at the discretion of the inventor, but subject to international treaties with reciprocal rights.

11. No, except in the event of the formation of a separate tribunal to which might be referred the question of prolongations and confirmations.

12. The entry of a disclaimer or memorandum of alterations should not debar the Patentee from sustaining an action for damages for an infringement of the undisclaimed parts of the invention prior to the enrolment of the disclaimer or alteration.

By MESSRS. JOHN CROSSLEY & SONS.

1. We think that the present charges for obtaining Patents are very equitable for both parties.

2. We approve of the arrangement as it now stands.
3. Ditto.
4. No.
5. We think this should be left to the discretion of the law officers, who would not refuse except in extreme cases.
6. We are not aware of any difficulty now.
7. Yes. We are of opinion that there ought to be one or more judges appointed for the express purpose of trying Patent causes, who should be assisted by scientific experts, who should not be allowed to practice on their own account; the cost might be defrayed out of money received for the granting of Patents. The decision of such judge should be final.
8. No.
9. Yes.
10. Yes.
11. No.
12. No.

ANSWERS and OBSERVATIONS of MR. WILLIAM TASKER, of HALIFAX, Patent Agent.

1. Reduced to the lowest possible amount necessary to cover the working expenses of the Patent Office in an efficient manner; should say 5*l.* on the application and 5*l.* on the grant of Letters Patent, with a tax of 5*l.* per annum during the continuance of the Patent right. In France the Patent Office fees are 4*l.*, and 4*l.* per annum.
2. No. Protection for six months ought to be granted to all applicants as at present, but a strict investigation ought to be made afterwards by a qualified staff of examiners as to the novelty thereof, giving a report to the applicant of the result of their investigations within two months from date, the applicant being still at liberty to complete the Patent or abandon his application; the report of the examiners to be printed with the specifications after the expiration of six months.
3. Ex-parte in the first instance, but subject to opposition to prevent fraudulent applications being granted, in which case the hearing should be in public.
4. Yes, under present arrangements, but such would not be the case if the foregoing suggestion were adopted,

ANSWERS by MACFIE & SONS, LIVERPOOL CHAMBER OF COMMERCE.

1. The expense of taking out Patents should be increased, rather than diminished, for two reasons.

To prevent the taking Patents for frivolous inventions.

And, more particularly, to nip in the bud the tendency to patent without that sufficient investigation to ascertain whether the invention is novel or not, which the nation that grants the right to a Patent is entitled to demand.

Note. It is feared that, to save the expense, and avoid inconvenient ascertainment, which due searches and inquiries would occasion, Patents are likely to be more and more taken out without proper preliminary inquiries. It may readily become a matter of calculation with unprincipled persons whether to take out a Patent in ignorance of its novelty, and even in face of presumption that its novelty is doubtful, or to incur the expense, delay, and hazards, of taking due pains. The temptation is great to choose the worse course, by which there is a fair chance of securing fees from users who when a Patent is invalid either do not know its invalidity or will not take the trouble to contest it.

Note. There should be *penalties for proved want of proper inquiries.*

Installments are advisable, inasmuch as they encourage patenting; inasmuch as they put poor persons nearer the rich in facility for obtaining Patents; and especially, because they sometimes have the most welcome effect of shortening the term of injurious monopoly.

2. Not satisfactory. It would be well (besides requiring the due searches alluded to in No. 1) to appoint a *jury of experts* to report as to novelty.

and greater facilities were provided to enable the public to ascertain what is patented.

5. No; patents should not be refused on such grounds. The inventor or applicant is, or ought to be, the best judge of the value of the invention, or at least runs the greatest risk in the matter. The public cannot be loser by the making known of a new invention at the inventor's own expense, however frivolous and trifling and even useless it may be.

6. Patents ought to be repealed when rendered invalid or void, and a list of such published periodically, at least once a year, stating the reason of their becoming void, in order that the public may know which Patents are valid.

7. Yes. Cases of infringement should be tried in the first instance in any of the ordinary courts of law, before a special jury of gentlemen conversant with the subject matter of dispute; but either party should have the power of appeal to the Judges sitting in banco, whose decision, if confirming the judgment of the special jury, shall be final; but if not agreeing, an appeal may be made to the Privy Council, whose decision shall be final.

8. No, the law of supply and demand will settle that; but if a Patent is not worked during any one year or other fixed period of time it ought to be repealed, as is the case in several foreign countries.

9. Yes, as now.

10. Yes, to either, at the discretion of the inventor.

11. No, that matter may be settled by the Privy Council, as at present.

12. No, with the exception of any applicant being allowed to disclaim in his final specification some thing which has been introduced into his provisional and afterwards found to be not new, and be allowed to make the necessary alterations therein accordingly.

I would also suggest that the Commissioners of Patents should consist of three members eminent for their scientific acquirements; one to be conversant with mechanical engineering, the second with chemistry, and the third a barrister or law officer, with a sufficient staff of assistants, who shall devote the whole of their time to the Patent Office, and be paid liberal salaries out of the funds arising from the fees paid by Patentees.

Halifax, Jan. 14, 1863.

The experts may be consulted by circular after the Patent is provisionally secured; and they should be selected from among the *best known men of business* in the several departments of manufacture, agriculture, shipping, mining, &c., to which the inventions apply.

There may be objections to judgment being final, and no appeal allowed.

The tribunal should not be fettered by any restrictions that would interfere with the thoroughness of its examination.

Note. It would be advantageous to appoint an *advocate of public interests*, to whom should be confided the defence of the public against undue claims and all abuse of the Patent system. Without this the public must have its interests compromised.

4. Multiplicity of Patents is undoubtedly a great evil. Any method of rewarding the publishers of inventions that would shorten the term of monopoly should be hailed. The shorter the term, the fewer Patents at any one time in force. A three years maximum term would render Patents comparatively unobjectionable, use to be free thereafter.

Mem.—It is highly desirable to introduce some plan by which inventions of a kindred character which may be used in combination can be *bargained for and paid for together*. The present system fails to afford any facility for such a public accommodation, thereby rendering multiplicity a serious nuisance.

Amidst the many thousands of Patents which the cheapening of Patents has called into pernicious existence few manufacturers indeed could afford time, if even they had the opportunity, to endeavour to thread their way to ascertain what inventions are

patented; whether novel, whether worth a rush or a king's ransom, in whose hands held, &c., &c.

No classifying by the Patent Office can give any very complete relief from this formidable and growing, this inevitable bad effect of "spawning" inventions. But much more might yet be done. The greatest credit is due to the publication department of the office; still it should be encouraged to do much more, for instance:

There should be issued a monthly and a yearly list in which every invention is exhibited alphabetically under not one, but each of the several branches of business to which it directly or indirectly appertains. On such a plan of classifying, a Patent may appear under several heads. Every known trade, and every important material, should have a head.

5. Nobody need object to Patents for the most trifling novelties if the term of monopoly be at most three years, or if the value be fairly estimated, and a maximum remuneration be fixed, in the manner to be indicated.

6. It is desirable to have all obstructions cleared away from the path of commerce, and the sooner and more completely the better.

Mem.—A complete list should be issued annually of patents at the time remaining in force.

Note.—It would be well to require as a condition, without which patent fees should not be exigible, that for this annual list the publishing department should be timeously supplied with the address of the holder or agent for each. Again; it is worth some effort to devise a system by which, through repayment of a part of the original expense of patenting, or by honorariums, or otherwise, inventors may be induced to yield up part of their term.

8. In these times, when inventions are, in general, not the means of introducing new trades, but only of perfecting trades that exist, or of perfectionating inventions already in use, there should be no question that licences must be compulsory.

When parties cannot agree as to the remuneration for use, arbitration should be imperative. The court might be entitled, if the parties cannot agree as to this, to call in experts; and, in arbitrating, these should be required to take into consideration all circumstances brought under their notice, touching

The advantages and gains derivable by the patentee and the users respectively;

The charges for use that other licencees pay;

The extent to which foreign importations are liable to charges for the use of the invention in the countries of production or manufacture;

The number of other patents that the licensee has to pay for;

The cleverness of the invention;

The cost of perfecting it.

Mem.—Every person should be allowed to use an invention at once, or at the end of three years, on intimating his purpose to the patent's agent, or to the patent office.

This is requisite, as patentees so frequently neglect their patents, by not pushing them into notice.

9. Importers of foreign inventions may have three years' privileges.

10. Foreigners may have the right of patenting, but each should be bound to have an agent to grant licences here.

And their inventions, as likewise all others patented, should be invalid if not begun to be worked in earnest within a year or eighteen months.

11. No patent should be valid that has ceased to be in force in foreign countries.

In place of extending the duration of any patent, let there be a grant of money from the exchequer, as a reward in special cases.

In the foregoing answers it is assumed the principles of the existing system are to be upheld. Radical changes are, however, necessitated by the development of the manufactures and arts. And *free trade* renders the practical application of these changes most urgent. It is unfair, and positively suicidal, to expose British manufacturers, ship-owners, &c., to unrestricted competition with foreigners, who may be, and often are, free, in a great degree, from these undeniable restrictions and burdens, which embarrass, oppress, and hold back our countrymen.* Relief can be easily afforded without unfair treatment of true and meritorious inventors. Not to broach a too advanced plan, the following amendment is respectfully submitted:

Give a three years' monopoly, and no further privileges.

At any time within ten years let the Patentee be entitled to demand that his invention shall be valued.

Let the Chancellor of Exchequer yearly obtain a grant of money for remuneration of inventors;

If insuperable obstacles prevent a national grant, let the valuation be made at the end of the second year of monopoly, or, in exceptional cases, at a later period, and let *Government*, as an exceptional act, or else the *manufacturers* either from a sum to be by themselves subscribed, or by the accumulated sums they shall pay for licences, be authorized to purchase and throw open to the public the unexpired term of a three years' monopoly and of eleven following years of licensing privileges.

* As nobody will now advocate a return to that protection which made this evil of patent burdens unseen or unfelt, the nation must needs adjust its patent laws to its new circumstances.

ANSWERS OF MR. JAMES FLETCHER, MANCHESTER.

1. I think the price of obtaining Letters Patent should be kept as it is, and can see no reason to alter the times of payment; if it is divided into a number of small sums, payable at different times, there is a greater risk of one of them being omitted by mistake, and thus cause the Patent to be lost, even though it might be the fault of the agent, and I think in such cases, if it can be proved to be a mistake, there should be some inexpensive means of rectifying it, by the patent judge or some other constituted authority having the power to do so, and allow the Patent to proceed.

2. I think there should be a preliminary specification lodged on application, and that it should set forth the nature of the invention, and state whether similar inventions have been in use, or patented before; if so, he should be compelled to show in which part his improvement consists, and that his is an improvement, and of greater utility, and not a frivolous or obstructive Patent. If something of this kind be done, there might be a board of examiners, consisting of a scientific mechanic, a practical chemist, and a legal man,

thoroughly conversant with the Patent laws. If the applicant is not compelled to point out that similar inventions have been in use before, either as Patents, or otherwise, I cannot see how any board of examiners could be expected to find out that there is any novelty or subject for a Patent.

There are so many different things made which are not secured by Patent, which are much more likely to be known to the applicant than to any examiners not in the locality, or connected with the business; the examiners would then have to see that it was a proper subject for a Patent, and an improvement of sufficient importance.

3. The specification should be gazetted and published in the district where the inventor resides, if in England, or where the Patent is used, and also be liable to opposition.

4. If clause No. 2. be carried out as I propose, No. 4 would be unnecessary.

6. It is my opinion that if a Patent be once invalid by a prior claim or other cause, it should at once

be repealed by the Crown without any further expense to the public.

I think there should be a special court and judge appointed to all Patent cases, the jury to be selected from eminent men in their profession, who are capable of giving an opinion on the matter in dispute, and to be called from different parts of the country by the judge or some other authority, and paid by the parties bringing the action, say 5 or 10 guineas per day and travelling expenses, which would be some check against parties bringing frivolous actions, and if the case be proved, the defendant or infringer to refund the money; three or five jurors would be as many as would be required.

8. The Patentee should be responsible for the Patent as at present, and should be compelled either to grant licences or supply the public with the articles manufactured in some reasonable time. I think that Patents should be granted to foreigners residing abroad, or through their agents, but not except they are the inventors, and parties should not be encouraged to pirate the inventions of others and come here to Patent them. By excluding all foreigners from taking out Patents many valuable inventions might be prevented from coming to this country, and might prove very injurious to its trade.

ANSWERS of the BRISTOL CHAMBER of COMMERCE.

Bristol Chamber of Commerce,
52, Queen Square, Bristol,
14th April 1863.

To Her Majesty's Commissioners on the Patent Laws.

GENTLEMEN,

In reference to the questions from the Patent Law Commissioners submitted to the Bristol Chamber of Commerce, the Committee of the Chamber beg to offer the following observations:—

That Patents, or the exclusive use of an invention for a certain time, should be granted by registration and the deposit of a specification. This would greatly decrease the number of frivolous Patents which are taken out only as puffs and for the sake of placarding "Royal Letters Patent," for then they would not be paraded as Royal grants, but be simply valued as legal rights.

This system of registration would also place the granting of exclusive rights for certain inventions upon a similar footing to that which exists with respect to copyright in books, and the Chamber considers the laws of copyright and Patents should be assimilated.

The Registration Fee should not exceed 10*l.*, and there should be no other official charge.

The only preliminary investigation should go so far as to secure a clear statement of the object of the invention to be made by some officer of the Court of Registration, fully competent by education and experience, not as at present by the Attorney or Solicitor General, who have no special qualification for the duty, and are otherwise fully occupied.

ANSWERS of Mr. J. SPENCE of LIVERPOOL.

I am of opinion that the Patent system, on the whole, is of more injury than benefit to the community. It is based on a principle correct enough centuries ago, but now obsolete. When the arts were in a barbarous condition, it was expedient to lure men's minds in the direction of Inventions to improve them. The wants of society were many and pressing, and there was room for great discoveries and for Inventions entirely novel or of prime importance. In such a state of things it may have been to the interest of the public to suffer the evils of monopoly, in order to draw inventive genius in a direction where it was so greatly wanted.

All this is changed. Every pathway of science has been explored, and the arts are brought to such a point that great Inventions are at an end, and the business of the patentee now is to contrive modifications, often little

I think if it could be shown that a valuable Patent had not been productive to the inventor, he should have the privilege of an extension of time, if he could show that he had exerted himself to push it forward.

An inventor should have no privilege of disclaiming any essential part of his Patent, but if the Patentee should find some trifling non-essential claim which would invalidate his Patent, if a good and useful one, he should be allowed to disclaim it.

There should also be an alteration made where a party entering an action for an alleged infringement, should be compelled to show that he can pay the costs, should he lose. There are many actions brought in the name of Patentees who in reality have very little to do with it, and should the trial result in favour of the defendant, he will have all his costs to pay; a great many cases of this kind can be quoted, where parties have had thousands of pounds to pay for defending an action, but would rather lose it in court than have it extorted from them.

JAMES FLETCHER.

Greengate, Salford, Manchester.
9th April 1863.

That the tribunal for trying the validity of the Registration should consist of a Judge of the Superior Courts of Westminster and six Jurymen, chosen from men likely to be acquainted with the subject-matter of new inventions. The law to be determined by the Judge and the facts by the Jury, in a similar manner to the practice of the Admiralty Courts, where the Masters of the Trinity House assist the Judge.

That if an invention has not been in use for (say) 25 years, its useful application should be considered new, although it may have been used or published before that period. This would greatly decrease the expense of supporting or proving many disputed Patents.

That it is most important to keep in view the fact, that granting the *exclusive* use of a new invention to the inventor for a certain time is not so much a favour to him as a great benefit to the public.

It is the only means by which capital can be invested in the perfecting a new machine or manufacture, for no capitalist would invest money in a troublesome and doubtful speculation, if his success were to be at once shared or perhaps taken from him by the public; and experience points out that many of the most useful inventions are the result of long-continued experiment and labour, oftentimes pursued under great difficulties and expense.

By order. Signed on behalf of the Bristol Chamber of Commerce,

HERBERT THOMAS,
Chairman of Special Committee.

more than mere differences of pattern. This secondary field is not to be despised; but it may well be doubted whether it would not be sufficiently cultivated without the incitement of a Patent system.

The evils of the present system are serious. There is a charm in the name of a Patent which entices large numbers of men to neglect their own affairs in pursuit of some phantom. Where intellectual power exists of an inventive character, it will develop itself without any spur; it is, indeed, irrepressible in its nature. To such minds the stimulus of a Patent is superfluous; but there is a very numerous class of men of some small ingenuity, which they usually over estimate, on whom the idea of a Patent acts as that of a prize in a lottery, and with just as injurious an effect on their true welfare. Shoals of such men are always at work under this incitement, wasting time, money, and what little

talent they do possess; and the result is, as all know, that some 98 out of every 100 Patents end in loss to the parties and are worthless to the public.

Besides the progress of the arts, another change has occurred which affects this question. Formerly improvements made slow progress, and unless an inventor were protected for many years he had little chance of recompence. Now the power of advertising is so great, and intelligence is so diffused, that any really useful Invention can be brought immediately into operation and profit. Were Patents abolished, any one with an Invention of value could find a manufacturer to take it up. It is true it would be open to the rest of the world, as soon as found out, but the manufacturer would obtain the first start of all others, in itself a profit. Under the present system the legal protection breaks down in practice. The moment a Specification is published, competing manufacturers strain their wits to contrive how to reach the same result through other means or modifications; in other words, how to infringe. Against this the patentee has no remedy, except proceedings at law of the most costly nature.

No change can be proposed in Patent law that will not be open to objections based on individual cases of hardship; but, on a comprehensive view of the subject in all its bearings, I hold that it would benefit the country to abolish the system *in toto*. Manufacturers would be relieved from present perplexity, delusions would no longer be kept up by excitement, an enormous waste of money would be stayed, and whilst the mass of worthless Patents would disappear, any of real value would be taken up on its merits and produce sufficient remuneration to the inventor. As, however, such a change may be too violent for public opinion, I reply to the questions asked in their numerical order.

1. The present cost of Patents is far too low, and this has the effect of flooding the country with a deluge of Patents trivial and useless.

2. The present mode of obtaining a Patent is most unsatisfactory. Opposition is an exception to the rule, and, when made, is usually defeated. There is

no attempt to protect the public against useless, and therefore injurious, Patents. They should go before a special tribunal in the first instance, and be tested on the points of novelty and utility before they are finally granted by the Crown.

3. Such investigation should be public and open to opposition, the inventor being protected pending the inquiry.

4. Great inconvenience is experienced by the multiplicity of Patents. This will be obvious to any one who runs over the list on any particular subject. It is difficult for a manufacturer to move in any direction without treading on the toes of some sort of a patentee.

5. Certainly. The public sustain direct injury from frivolous Patents. Why create a monopoly on such grounds?

6. Invalid Patents, if trivial, are still born; if important, they are killed at law. No further means seem needed to repeal them. The remedy is to prevent their coming into existence.

7. Yes, as stated in reply to question 2.

8. No legislation needed on this point. It is seldom that the patentee is not eager to grant licences.

9. No. It may have been expedient in another age; but in the present state of the arts it is not to the interest of the country to grant these Patents.

10. Not at all. They can act through agents in this country. Such a step would increase complications already excessive.

11. I am not prepared to suggest alterations on these points.

12. As the law stands, the present system of disclaimers and memoranda of alterations needs no change. But if the Patent were tested by a tribunal, before sealing, it should then go finally to the public, and no change be permitted afterwards.

May 28, 1863.

ANSWERS by MR. J. FAIRRIE.

1. In the present state of the law respecting granting Letters Patent, it would be unadvisable to lower the cost, but if restrictions were imposed so that no Patent could be obtained except for ascertained improvements, the less the expense of obtaining Letters Patent the better.

2. The present mode of obtaining Patents does not appear to me satisfactory. They can be obtained for mere fancies. A speculator in Patents meets in the course of his own thoughts or observations with an idea, or he hears of some suggestion which he thinks may be turned to account, and he wishes to secure the *possible* invention or discovery. It is no exaggeration that Patents taken out under such circumstances in 19 cases out of 20 are worthless. Men who spend their days in scheming in all possible subjects seldom succeed in any thing, and I believe it will be found to hold good as a rule, that it is only by persons actually engaged in manufactures that substantial improvements are made. In the course of my long experience, extending over upwards of 50 years, among all the multitude of Patents taken out for improvements in sugar refining, not half a dozen have been of any avail. To put the granting of Patents on a proper footing, it seems to me requisite that a competent tribunal should be appointed, which should not only examine specifications, but should also receive and call for evidence as to the newness of the invention, and also as to its being in reality a practicable improvement.

3. The investigation should be public, and subject

to opposition. I see no ground for objections to the present practice as to caveats.

4. I believe that public inconvenience is caused by the multiplicity of Patents, and that by the present law and practice as to Patents, manufacturing improvements are retarded rather than furthered.

5. I think Patents ought to be refused if a competent tribunal shall decide that the inventions are of a trifling and frivolous nature.

6. Invalid Patents should be repealed as soon as possible.

7. A special scientific tribunal should be constituted to try actions as to Patents.

8. It seems to me that the balance of advantage and disadvantage is in favour of having the granting of licences made compulsory; but how this is to be done is the difficulty, unless the amount to be paid for licence were left to the decision of the tribunal whose appointment I have suggested.

9 and 10. If a discovery or Invention has been made public abroad, it should not be made the subject of a patent right in this country, but otherwise natives and foreigners should be placed on an equal footing.

11 and 12. I have no suggestion to make with respect to these.

Church Lane, Whitechapel,
London, 6th June 1863.

JOHN FAIRRIE,
Sugar Refiner.

ANSWERS of the INVENTORS' INSTITUTE.

Inventors' Institute, 26, Great George Street,
Westminster, S.W.

MY LORDS AND GENTLEMEN,

IN accordance with a resolution of the Council of the Inventors' Institute, we respectfully submit for your consideration the following answers to your questions, connected with the working of the Patent Law.

We have, &c.

RICHARD ROBERTS, C.E., Chairman.
R. MARSDEN LATHAM, Hon. Sec.

To Her Majesty's Patent Law Commission.

1. We submit that the cost of Patents should not exceed what is absolutely necessary to defray office expenses.

The high cost of Patents renders it quite hopeless for most persons with limited means to seek protection for their inventions, and numerous useful and valuable ideas are consequently lost to the public. Many inventors, knowing that they cannot afford the charges exacted, and seeing no fair prospect of being able to pay for a Patent, will not allow themselves to be led into a new inquiry, and are thus deterred from carrying on the experiments necessary to practically and beneficially develop their new ideas. Perfected inventions also of great value, which, if publicly made known would give employment for a great number of hands, are notoriously kept secret and withheld from public use owing to the expense of taking out Patents; such inventions are all doubly lost, since, if known to the public, they would become the subject of researches, which might lead to other very important and beneficial results.

The high cost of Patents moreover frequently obliges inventors of limited means, when seeking the assistance of capital, to enter into disadvantageous arrangements, and thus many hardships and great injustice are occasioned. We may here observe also, that the third and seventh years payments of 50*l.* and 100*l.* fall very heavy on many deserving inventors, who from sheer inability to pay, are compelled to relinquish valuable Patents, when just on the eve of realizing their hopes of advantage.

Even with regard to the so-called "frivolous" and "useless" inventions, the present prohibitory charges are most impolitic and injurious in their effects. A "frivolous" invention, so-called, may, nevertheless, from the extent of the demand, give employment to many idle hands; it may require for its construction many taxable materials, and form an article of export, so as to become profitable to the community, whilst a "useless" invention, so-called, will not unfrequently indicate to other inventors, who may succeed better, a want to be supplied, and so lead to the speedy accomplishment of what is desired. An invention, however useless it may seem, may be suggestive of and give rise to other inventions of undoubted practical utility, and it often happens that the first inventor, though stumbling at every step, and himself unable to achieve success, yet opens up a broad path for other inventors who come after him. The following abstract of receipts and disbursements has been prepared by a member of the Institute from the official Reports, extending from October 1852, to December 1861, published by the Commissioners of Patents for Inventions:—

RECEIPTS AND EXPENDITURE OF PATENT OFFICE 9½ YEARS, Oct. 1852 to Dec. 1861.

	1852-3.	1854.	1855.	1856.	1857.	1858.	1859.	1860.	1861.	Totals.
RECEIPTS.										
Stamps in lieu of Fees -	£ 72,911	£ 53,030	£ 73,583	£ 91,116	£ 83,887	£ 83,581	£ 95,122	£ 108,132	£ 99,979	£ 761,341
Sale of Specifications -	" "	834	1,236	1,361	1,463	1,371	1,682	1,439	2,051	11,437
	72,911	53,864	74,819	92,477	85,350	84,952	96,804	109,571	102,030	772,778
EXPENDITURE.										
Law Officers' Fees -	19,082	7,818	8,197	8,761	8,913	8,235	8,409	8,820	8,965	87,200
Law Officers' Clerks -	2,634	831	739	777	798	748	750	801	814	8,892
Patent Office, Salaries, &c.	3,757	3,686	4,003	4,314	4,546	4,688	5,562	6,459	6,573	43,588
Current and Incidentals	3,987	3,342	3,962	5,850	7,565	8,742	5,501	5,024	4,153	48,126
Compensation Fund	4,663	4,537	4,584	4,584	4,584	4,584	4,584	4,584	4,584	41,288
Stationery -	"	"	"	"	843	1,670	1,285	1,177	2,594	7,569
Rent -	355	490	490	490	490	490	490	520	617	4,432
Printing and Lithography	10,831	29,746	20,762	35,185	38,506	25,011	12,918	12,285	13,425	198,669
Paper -	1,288	13,052	5,500	5,799	9,161	5,644	2,857	2,419	2,786	48,506
South Kensington Museum -	"	"	"	"	1,966	1,362	1,403	1,134	1,190	7,055
Salaries for do. -	"	"	"	"	375	575	575	517	730	2,772
Index, Mr. Woodcroft -	1,000	"	"	"	"	"	"	"	"	1,000
Fitting up Offices	"	"	3,503	"	"	"	"	"	"	3,503
Coals -	"	"	"	"	"	56	60	88	131	335
	47,597	63,502	51,740	65,760	77,747	61,805	44,394	43,828	46,562	502,935
Paid to Revenue Account -	"	"	35,100	16,685	15,275	15,370	17,725	20,195	18,485	138,815

In the foregoing abstract, the odd shillings and pence have been omitted for convenience, and the amount is added in one sum in the following statement:—

	£	£
Total receipts -	-	772,778
Payments -	502,935	
Add for difference of shillings and pence -	6	
		502,941
		269,837
Deduct revenue fees -	-	138,815
Surplus -	-	£131,022

It appears, therefore, that after defraying all expenses from October 1852 to December 1861, there remained a balance of 269,837*l.*, of which sum, how-

ever, 138,815*l.* was paid as revenue fees into the governmental taxation account, leaving still unappropriated a surplus of 131,022*l.* But why a sum of 138,815*l.*, levied from inventors in the obtaining of their Patents for new inventions, should have been paid into the governmental taxation account, would seem to require explanation, there being no principle of equity, or even of sound public policy, on which so objectionable a tax can be defended.

As regards the still unappropriated surplus of 131,022*l.*, which will probably be increased by the year 1862 to 170,000*l.*, we submit that, in common fairness, this and any future surplus should be directly applied to some purpose in connection with the encouragement of inventors and the advancement of practical science.

It also appears from the foregoing abstract, that whilst the annual receipts from inventors now exceed 100,000*l.*, the actual expenses of the Government

Patent Office fall below 47,000*l.* per annum, whence it is obvious that a great reduction in the cost of Patents can be made without injury even to existing interests.

In the apportionment of the proposed reduced charge, we recommend that the charge for provisional protection should be made as small as possible. This unquestionably would be a great boon to the poorer class of inventors, who then could secure their inventions, and would thereby be enabled to treat with capitalists on more equal terms than at present for the means of bringing their inventions into public use.

With reference to the cost of Patents, we would further observe that the question, affecting as it does the whole progress of invention in this country, is one of most serious importance, and requires a thorough and liberal revision on the part of the legislature. Practical and scientific men, conversant with the state of manufactures abroad, are generally agreed that it is only by dint of great exertion, under the most favourable circumstances, that the supremacy of this country in the manufacturing and chemical arts can be maintained. The comparative cheapness of food abroad, the lightness of taxation, and the liberal encouragement afforded to science and its cultivators by foreign governments all materially contribute to counterbalance the natural advantages we possess; but the chief causes which check invention in this country, impede the progress of the industrial arts, and give the advantage to our foreign competitors, are the high cost of obtaining Patents for inventions, and the very doubtful protection which our laws extend to them when obtained; and we would urge upon our Government the paramount necessity which now exists for a greater and more liberal encouragement to invention than has hitherto been practised.

We do so in the confident belief that, were the difficulties to which we have adverted removed, it might reasonably be hoped that every new idea and every effort of invention and discovery would then be brought before the public and elaborated for the use of man. The following are the resolutions we have passed with reference to the cost of Patents:—

That it is not politic or right to subject inventors to any other expenses than such as are absolutely necessary to defray the official expenses incurred in securing to them the protection of their inventions.

That it is only reasonable and just that the existing surplus of funds levied from inventors since 1851 be directly applied to some public purpose in connection with the encouragement of inventors, and the progress of practical science.

That from the experience obtained by the operation of the new Patent law during the last ten years it is manifest that the present charges for Patents are very much too high, and we consider that the total expense attending the obtaining Letters Patent should not exceed 25*l.* That this sum should be divided into five sums of 5*l.* each, and a sum of 12*l.* 10*s.*, the five sums 5*l.* to be payable in lieu of the present 5*l.* payments, and the sum of 12*l.* 10*s.* to be payable at the end of the 5th year, or in such other manner as the Commissioners of Patents may deem advisable; but the committee recommend that the first payment should be made as small as possible.

That all further payments on existing Patents should be reduced to this proposed scale.

2. Practical benefit, we believe, would result, both to inventors and to the public, from the establishment of an official scientific body of competent and experienced persons acting in conjunction with the Commissioners of Patents for Inventions, to investigate the question of novelty on all applications for Patents, and whose duty should be to inform the applicants if their alleged inventions be new or old, leaving each applicant to determine for himself whether at his own risk he will take the Patent out or not.

But as regards the utility and importance of inventions it might be productive of great injury to inventors to empower any body of men to consider either of these points. Questions of utility and im-

portance can be safely determined by time and actual trial only; and it has been well observed that “what may appear simple and trifling in one age often becomes a great invention in another.”

Many important and valuable inventions would undoubtedly have been lost to the public had the efforts of inventors been arrested in their progress by the condemnatory but erroneous opinions by which the inventions were at first assailed, opinions for the most part pronounced by the very men esteemed the most competent to judge. Mankind are always slow to receive new truths; and the history of invention and discovery affords many notable instances of great and valuable inventions having been received, not merely by the ignorant or the world generally, but by the learned and the great men of science with derision and mistrust. These views receive almost daily illustration, and facts such as the incredulity and opposition which retarded the first introduction of gas lighting, railways, and locomotives.

Franklin's discoveries with regard to electricity, Watts' steam-engine, the transmission of messages by means of electricity, the propulsion of vessels by steam, and a host of other inventions conclusively demonstrate the dangerous fallibility of human judgment when endeavouring to estimate the true character or importance of things previously unknown or little understood.

We are of opinion that no power to refuse applications for Letters Patent beyond what is now practically exercised should be conceded or allowed. The power of refusal is entrusted to official investigators in a few countries abroad, but our experience of its operation in those countries has been generally unsatisfactory, and we view the system with feelings of unequivocal mistrust. The system does not prevail, moreover, in France, Belgium, or in other nations whose policy respecting invention is more advanced than that of our own country.

Few inventions can be brought into general use in a less period than three or four years; indeed, some inventions are so far in advance of the age that a lifetime of labour is scarcely sufficient to secure not merely their adoption, but even the recognition of the scientific truths they involve. In a majority of cases of this kind, official preliminary investigation, followed by any consequent stoppage of Patents, would obviously be premature, sufficient time not having been allowed for the proper practical development of the invention, and adverse erroneous decisions in such cases would inflict not only serious injury upon the public, but would occasion the ruin of many meritorious inventors whose means had all been expended in bringing their inventions to perfection.

We would further observe that in considering the question of novelty it frequently happens that the only points of difference between a subsequent and a prior invention are distinctions extremely delicate and minute, which, though seemingly trifling and frivolous, yet constitute in practice and effect the all-important difference between failure and success. Numerous additional instances can readily be furnished, showing how highly dangerous and impolitic it would be to make an adverse decision on the part of any preliminary investigators the ground for refusing a grant of Letters Patent, but enough has been stated on the subject. We will further remark, however, that no immediate appeal would remove the difficulty in question, it being beyond doubt that no body of men, whether legal, scientific, or otherwise, are equal to the task of pronouncing authoritative and final judgment on the inutility or non-importance of all the new and multifarious inventions which are continually being produced by the ablest and most ingenious minds of a country so eminent for its mechanics, engineers, manufacturers, and men of science as our own.

Still, after mature consideration, we are inclined to believe that many advantages would arise from a well-conducted preliminary investigation if its direct effect were restricted to placing officially on record

the opinions of the investigators touching the novelty of alleged inventions. We therefore recommend that a full description of the invention should be submitted to the investigators previous to the sealing of the Patent, whereupon the investigators should at once institute a search, and if they arrive at the conclusion that the alleged invention either altogether or in part is not new, their opinion with suggestions for any rectification which may seem desirable should be communicated to the applicant. If then the applicant refuses to comply with the suggestions made, and moreover cannot satisfy the investigators that they have misapprehended the subject, for which opportunity shall be given him, the opinion of the investigators should, with the sanction of the law officer, be placed on record, the applicant, however, having the right reserved to move at any future period for the cancelling of the record. An investigation so conducted would, in practice, occasion the withdrawal of applications for such Patents as would not be sustainable at law, for few inventors, on it being distinctly shown to them that their inventions are not new, would be foolish enough to proceed further in obtaining an obviously bad Patent, and thus incur needless additional expense. The public also would pay little heed to a Patent with a condemnatory official record upon it; and supposing the investigators had not distinctly erred in their judgment, any Patent of that character, if brought into a court of law, would certainly bring disaster upon the patentee. On the other hand, the investigators, feeling that their decisions, even though adverse, were not irremediable, would not be influenced by the doubts which must necessarily rise in their minds when endeavouring to arrive at decisions upon new inventions. The value, moreover, of those Patents whose novelty was undisputed would be greatly increased, capital would the more readily be embarked in developing inventions thus approved, and the inventor would be encouraged to prosecute his efforts with that energy and zeal which alone lead to success.

We submit that the following resolutions with reference to the granting of Patents, should be carried into practical effect:—

That it is desirable to recommend the official appointment of a board of investigators, before whom all applications for Letters Patent shall be presented for consideration.

That no report or opinion of the proposed official investigators should prevent any applicant from obtaining a Patent, when such applicant nevertheless persists in applying for the same.

That the official investigation shall take place under the control of Her Majesty's law officer, not on application for provisional protection, but after notice to proceed.

3. The investigation should not be public, as we consider that no official publication should take place before the actual granting of the Patent. The present practice as to oppositions, with such modifications as would result from the action of the preliminary investigators, referred to in our answer to question No. II., should still be maintained.

4. We repudiate the notion that practical public inconvenience is caused by a multiplicity of Patents.

5. As stated in our answer to question No. II., we are decidedly of opinion, that no power to refuse applications for Letters Patent, beyond what is now practically exercised, should be conceded or allowed. We would further here reiterate that part of the statement contained in our answer to question No. I., in which it is shown that the so-called "frivolous" and "useless" inventions may, and frequently do prove very beneficial to the public.

6. We see no objection to greater facilities being provided for the repeal of really invalid Patents.

7. That for the efficient administration of justice with regard to the trial of patent causes, and with regard to patent law matters generally, it is desirable that

a special court should be created, and that a permanent commissioner should be appointed who might be termed the "Commissioner in Ordinary;" that such permanent commissioner should be empowered to deal with disputed questions of Patent right, and that all causes and judicial proceedings relating to Patents and inventions should be subject to his jurisdiction.

That one appeal from the permanent commissioner's judgments ought be deemed sufficient and final, and it is desirable that such appeal should be dealt with by the Privy Council.

That the permanent commissioner should be empowered to decide causes and questions without a jury, as is done in the county courts, but a special scientific jury should be empanelled, when demanded, by one or both of the suitors in any cause, or an ordinary jury of twelve should be empanelled, provided both suitors consent to the adoption of that course.

That a list of persons competent and willing to act as scientific special jurymen should be made out, a jury of three, five, or seven to be selected from such list by the suitors in cases where such a jury is demanded, and in the event of the suitors not agreeing then by the commissioner, before whom the cause is to be tried.

That the sittings of the special court should not be restricted to London only, but that such sittings should from time to time be held in the county courts (if convenient) of our great seats of manufacture, such as Birmingham and Manchester.

That if approved of by Ireland and Scotland, it might be desirable that similar commissioners should be appointed for those places.

As showing the urgent necessity for reforming the present system of legal procedure with regard to the trial of patent causes, "a system fraught with grievances so great as in many cases to amount to a 'practical denial of justice,'" we would here quote the following cogent remarks of Thomas Webster, Esq., F.R.S., a barrister well known in connection with patent law questions. "It may be expedient to trace the 'progress of a contested action on copyright or patent right, many actual cases of which may be cited. 'The first step, notwithstanding the extension of 'jurisdiction recently conferred on the Courts of 'Common Law, is generally a Bill in Equity presenting a view of the case which at the time appears 'most calculated to answer the object in view. This 'application is supported and opposed by affidavits 'and counter-affidavits of indefinite expansibility. 'The words of Lord Lyndhurst, when speaking on a 'recent occasion on the mode of taking evidence in 'the Court of Chancery, admirably expose the pernicious consequence of this system. 'The basis 'of an affidavit is supplied by a scientific witness, 'then it is drawn by a solicitor, and settled by 'counsel, the result of which elaborate process is 'naturally a confusion of the scientific facts. It is 'commonly the case that unpractised witnesses, who 'may be quite conversant with the manufacture in 'question, and who give valuable evidence upon it 'as the basis of the affidavit, are continually induced 'to accept the *ex parte* version of it, without really 'understanding the effect of what is ostensibly their 'own evidence.' The filing of affidavits having 'ceased, the motion is arrived at, and arguments of 'greater or less length are heard before a judge, 'perhaps the most competent from knowledge and 'position to weigh the similarities and dissimilarities 'of the conflicting affidavits settled as explained 'with all the professional skill, scientific and legal, 'that money can command. The parties are then 'handed over to, and have to start afresh before 'another tribunal, for a trial by jury. This stage 'passed, the matter is ripe for the opinion of the 'Court on the points of law reserved at the trial, 'the result of which is generally (if funds do not 'fail) either a new trial or an appeal to the Ex-

"chequer Chamber, thence to the House of Lords, and a return, after some indefinite period, to the same learned judge in Equity with whom the proceedings commenced, and probably to a rehearsal before the Lords Justices, or the Lord Chancellor, as the finale, unless the learned judge in Equity, on the matter being brought before him the second time, should order a new trial. The even tenor of the progress of this drama may be interrupted by various interlocutory applications, sources of great delay and expense, to the courts of equity and law, to the judge at Chambers, by a commission to examine witnesses abroad, and probably a *scire facias* to repeal the Patent."

8. No. Certainly not.

9. Yes. But without prejudice to the foreign inventor.

10. We see no objection to the existing practice being continued.

11. We think much greater liberality should be observed in the treatment of applications for prolonga-

tions and confirmations of Letters Patent; and with regard to confirmations of Letters Patent, such an amendment should be enacted that the inventor or introducer of an invention may more readily and with greater certainty have his Patent confirmed, notwithstanding a limited prior use.

12. It is very desirable that all grants of disclaimer and memoranda of alteration should be subject to such regulations as will secure greater consistency of practice, and that one appeal should be allowed. Whilst on the subject of disclaimers and memoranda of alteration, we would take occasion to strongly recommend, that memoranda of addition for improvements should be allowed to be filed at a small cost, and that such additions should be incorporated with and taken as forming part of the original invention.

In addition to the foregoing answers, we also again respectfully refer you to the Report of the Inventor's Institute, forwarded to you on the 5th February last, copies of which are enclosed herewith.

RICHARD ROBERTS, C.E., Chairman.

R. MARSDEN LATHAM, Hon. Sec.

ANSWERS of CHAMBER of COMMERCE, WOLVERHAMPTON.

1. The fees for securing Patent rights should be such as will cover at least, the entire expenses of a Patent Office, including both the Court and registry.

It is probable that with an efficient Patent Office and moderate fees an annual surplus might accrue to the public revenue.

It is desirable that only a small sum should be payable for preliminary registration, and that afterwards the payments should be annual and increasing rapidly in amount every year.

2. The present mode of obtaining Patents does not appear to be satisfactory. Before any Patent is granted there should be an investigation by a competent tribunal into the merits and originality of the alleged invention. The tribunal should be constituted partly of lawyers and partly of men skilled in scientific and mechanical studies. The judgment of this tribunal should be final, like that of the Encumbered Estates Court in Ireland; for if an appeal be allowed to the Court of Chancery all the present evils will exist and be aggravated.

3. The investigation should be public and subject to competition. The preliminary registration ought, however, to be obtained as a matter of course, and to be valid until the Court has given its decision.

4. Yes.—There is constant danger, if anything is new and successful, that it may be forced to trespass at some point or other on some Patent right. The want of arrangement also of existing Patents is much felt, and it would be well if a catalogue of Patents were regularly published.

5. It would be one of the main advantages to be looked for from a Court, some of whose members were men of scientific attainments, that it could safely and with justice refuse many frivolous Patents. It might also allow Patents for a long or short period according to their value and importance.

6. Yes; Patents should be declared invalid unless worked in business within a certain time of their being granted.

7. The Court instituted for advising the grant of Patents should also be the Court for deciding any suits for infringement, and its decision should be conclusive as to the infringement, but the question of damages should, if either party prefer it, be left to a jury.

8. It is highly desirable that every patentee should grant licences, but this Council cannot suggest any plan by which this could be made compulsory if due regard be had to the rights of the patentee.

9. No.—The only persons who can claim a benefit

from an invention as against the public are the inventor and his nominees. If brought here by any one else the invention should be free.

10, 11, 12. No answers.

Further Memorandum.

There are two objects for which the proposed Patent Court would exist.

1. To protect the public from the issuing of Patents for trifling and frivolous inventions, or for inventions so called of processes and contrivances that have been in use before.
2. To protect patentees from any infringement.

1. So far as the first object is concerned it would be comparatively easy for a well constituted Court to decide whether an invention was or was not of such novelty and importance as to deserve protection. It would not, however, be easy, or rather it would not be possible, to decide that a so called invention was really new. Whatever publicity might be given to the hearing and whatever notice, there would be always a possibility that those most interested might not hear of the application; nor again would it be just to require that persons who had long used a process or contrivance which was sought to be patented should have to appear to oppose the Patent. In many trades there are processes that are kept absolutely secret, and firms have risen to eminence as manufacturers of certain articles and goods whose mode of working is unknown. If any person should ascertain or rediscover these processes, and should apply for a Patent, it is not only possible but probable that those who had previously used the so called invention might not be present to defend their rights; for the case is one in which no advertisement or notice in the Gazette could fairly be held to be sufficient. But unless all parties concerned can be shown to have had sufficient notice the judgment of the Court must be *ex parte*—for no Court can of its own proper knowledge affirm that an invention is absolutely new. The Court would therefore decide absolutely that an invention was of such importance as to deserve a longer or shorter protection; but the question of originality would remain and must remain as now to be decided in the several cases in which an infringement might be alleged.

2. As to the second use of a Court,—the protection of patentees,—it appears to this Council that such a mixed tribunal as has been suggested would be far more capable of deciding the question of infringement than the present Courts of Law and juries.

ANSWERS of JAMES THOMSON, M.A., C.E., Professor of Civil Engineering in Queen's College, Belfast, and of WILLIAM NEILSON HANCOCK, LL.D., Secretary to the English and Irish Courts of Law and Chancery Commission.

1. The cost now payable by stamps, exclusive of some fees to the Law Officer (and for scientific advice to Law Officer in case he should require the same), appears to be as follows:—

Stamps prior to granting Patent	£
Do. before end of 3 years	- 25
Do. before end of 7 years	- 50
	100
Total	£175

This amount is greatly in excess of the sums payable in other countries, and we are of opinion that it should be reduced in amount to 70*l.* at most; we also think that the payment of this sum will be less onerous by having it made in annual instalments during the entire period.

A first payment of 18*l.*, with 13 annual instalments of 4*l.* each, making 70*l.* in all, is the scale which we would recommend.

2. We are of opinion that the present mode of obtaining Patents is not satisfactory.

We think that there ought to be a preliminary investigation of a more searching character than at present takes place.

We think that there should be a permanent officer, to be called a "Judicial Commissioner," of high legal and scientific attainments, charged with the duty now discharged by the Law Officer, with respect to ascertaining that the Provisional Specification is a fair and correct description of the nature of the intended invention, and that such Judicial Commissioner should be enabled to issue certificates allowing the same, and giving the benefits of provisional protection, similar to those now existing under 15 & 16 Vict. c. 83.

We further think that on the Judicial Commissioner should be imposed the duty of carefully examining, with the assistance of an adequate staff of clerks, into the *novelty* of each invention, so far as the same can be tested by the records of Patents previously granted, or by Encyclopædias or other books treating of known processes of manufacture, &c.

An examination such as is here suggested is made in the United States (a country most fertile in inventions), in the office of a Commissioner appointed for that purpose, with the effect (as stated in the report of that officer for the year 1849) of the rejection of two-thirds of the applications.

If the Judicial Commissioner should, as the result of the examination, not find reason for considering the proposed invention an improper subject for Letters Patent for want of novelty, he should grant provisional protection for the invention, and then direct that particulars of the invention should be advertised, and that at the same time notice should be given that he would report in favour of the grant of Letters Patent to the applicant, unless good cause were shown to him against the same on a certain day (say six months afterwards) in public Court. Letters Patent should on that day, if no objection was made, issue as of course as the result of the decision.

If, however, objection should be made, we think it should be competent for the Judicial Commissioner either to try the case in public in his own Court by himself, or with the aid of assessors or a jury, or to send an issue for trial to any Court of Record in the United Kingdom, should he think this latter course desirable for the sake of saving expense or otherwise.

If the Judicial Commissioner should, as the result of the preliminary investigation in the office, be of opinion that no Letters Patent should be granted, we think that it should be competent to the applicant to have a hearing of his case before the Commissioner in public Court (without prejudice to his priority should judgment be in his favour), where the Com-

missioner could hear counsel and have the assistance of assessors or a jury, as he might think fit.

In all cases we think there should be an appeal from the judicial decision of the Commissioner, and we think that the Judicial Committee of the Privy Council, which at present is the Supreme Court for Patents, should be the Court of Appeal.

As to the intervention of the Law Officers, we think that, instead of exercising judicial functions as at present, they should be confined to their ordinary functions of protecting the public by taking proceedings before the Judicial Commissioner in such cases as they may think desirable, and that, to enable them to do so, they should have notice of all cases where the Commissioner had advertised his intention of recommending the granting of Letters Patent, if no objection should be made, as well as where the applicant insisted on having his case heard by the Commissioner in Court before final rejection.

In the latter class of cases especially, we think that it would be proper that the Law Officers should appear to oppose the grant of Letters Patent that appeared to the Commissioner *prima facie* objectionable.

3. With respect to the first part of the question, as will appear from the preceding answer, we think that the preliminary examination alone should be *ex parte*, and that all the subsequent steps should be public and subject to opposition.

With respect to the second part of the question, we have not any special suggestion as to the practice as to caveats to make.

4. There can be no doubt that the multiplicity of Patents produces considerable inconvenience. The plan which we have recommended of authorizing the Judicial Commissioner to stop the granting of Patents for want of novelty would effect a large reduction in the multiplicity of Patents, without interfering with the rewards of true and original inventors.

The multiplicity of Patents in force would be largely reduced by the system of annual payments which we have recommended, as it would in general be only on really useful and valuable Patents that the patentees would continue to pay the annual charge, and so Patents for inventions of a trifling or frivolous character would in general have a very short duration.

5. As to whether Patents should be refused on account of the trifling or frivolous nature of the inventions for which they are claimed, we entirely concur with the opinion that was expressed by James A. Lawson, Esq. (now Solicitor General for Ireland), in his report on the Patent Laws, made to the Social Inquiry Society of Ireland in 1851. In it he says, "It is dangerous to give the Court any discretion with respect to the utility of the invention; novelty is a matter of fact; utility is a speculative question, which could not be satisfactorily decided upon, and which time only could test; and it is better that many Patents for useless things should be taken out than that any useful invention should be excluded from the privilege."

6. We think that if our suggestion as to the appointment of a Judicial Commissioner be adopted it will be desirable to substitute for the present complicated and expensive proceedings by *scire facias* a simple application on summons to the Judicial Commissioner, who should have power on the hearing of such summons to set aside any Patent that should be proved invalid for want of novelty or other defect. We think that in the exercise of this power, he should if he consider it desirable be assisted by assessors or by a jury, or by the result of an issue sent by him to some Court of Record.

7. We think the jurisdiction of the Common Law Courts as to infringement of Patents should still continue, and that the jurisdiction of Equity should

also continue ; but we here also entirely concur in the opinion of Mr. Lawson, as contained in his report, already referred to, that "In any proceeding in Courts of Law and Equity by the patentee, the Patent shall be conclusive evidence that the invention is a novel one, and that the Patent was duly obtained ; and that the only question that should be tried in an action for infringement shall be the fact of the infringement and the amount of damages, but that any party who was sued for such infringement, or against whom an injunction was sought, should have power of staying the proceedings until the result of an application to cancel the Patent was known."

We also think that in cases where the damages claimed do not exceed the amount recoverable in local Courts, the patentee should be expressly enabled to sue in those Courts.

8. With regard to Patents generally, we think that a system of compulsory licences as applied to articles of trade might seriously interfere with the production of the commodity, as the patentee would be deprived thereby of making the best arrangement for the successful working of his invention. We can, however, readily conceive cases, such as inventions connected with the electric telegraph and railways, where public inconvenience might arise from granting an absolute monopoly.

It appears to us that such cases would be best met by introducing clauses in the Patent fixing the terms on which the patentee shall be bound to grant licences; such clauses to be framed in an appropriate manner for each particular case, just as clauses regulating tolls are introduced into Canal Acts, and clauses conferring running powers are introduced into Railway Acts.

9. We think that Patents should not be granted to importers of foreign inventions ; such persons are not entitled to the merit of inventors, as they are simply copyists, and now that the intercourse with foreign countries has been so much facilitated by steam and promoted by free trade, the humble deserts of copyists of foreign inventions become even less entitled to reward.

10. We think that Patents should be obtainable by foreigners residing abroad, or by their nominees, provided that application be made by them within a period of, say, two years from the date of their obtaining a Patent in their own country, or within a more extended period, if the invention has not been previously to the application publicly used in the United Kingdom. The privilege not to continue in

the United Kingdom longer than the duration of the first foreign Patent.

We think this is but simple justice to a foreign inventor, and of course, as such, is an essential condition of our having any chance of success in obtaining in foreign countries a proper recognition of the rights of British inventors.

11. We think the proposed Judicial Commissioner should have jurisdiction for prolonging and confirming Patents, subject to the same conditions as now exist, an appeal lying from his decision to the Judicial Committee of the Privy Council. Of course under the system suggested by us, the question of confirming would arise in cases where an application to the Judicial Commissioner to cancel the Patent would for the purposes of defence in a particular action for infringement be successful in temporarily cancelling the Patent. It should, we think, under the proposed system be in the power of the Commissioner to confirm the Patent where the inventor believed himself to be the first and original inventor, and the invention had not before the date of the Letters Patent been publicly and generally used. Public notice should be given, and an opportunity of opposing in public Court, both the prolonging and confirming of Patents, as in the case of granting new Letters Patent.

12. We do not feel confidence in suggesting any alteration in the law as to Disclaimers and Memoranda of Alterations, save that if our previous suggestions be adopted, application will of course be made to the Judicial Commissioner, and the reference to the Law Officer will be no longer necessary in the first instance; but we think that notice by advertisements should be given, and that the subsequent proceedings should, so far as regards affording facility to all persons to object, be assimilated to those observed where Patents are granted.

We may conclude by suggesting the Probate Court as a kind of type of the Court we have in the foregoing suggestions ventured to recommend. We think that many points of analogy will occur to the Commissioners with regard to the subject-matter of the two Courts ; and we would entertain the hope that if a Court, constituted as far as may be on similar principles to the Probate Court, were created for the granting of Patents, great benefit would accrue both to inventors and the public.

JAMES THOMSON.

W. NEILSON HANCOCK.

3, Donegal Square East, Belfast,
5th March 1863.

ANSWERS to the QUESTIONS of the COMMISSIONERS circulated by the CHAMBER OF COMMERCE AND MANUFACTURES in the CITY OF GLASGOW.

Answers to Question 1.

By W. J. MACQUORN RANKINE, C.E., Professor of Civil Engineering in the University of Glasgow.

The costs should be adjusted so as to be just sufficient to pay the expenses of the Patent department (including cost of publication of specifications, drawings, indexes, and abstracts, library expenses, &c.) The cost should be paid by instalments.

By EDMUND HUNT, Esq., Consulting Engineer in Glasgow.

The present cost of obtaining Letters Patent is, in Government duties, 25*l.* during the first six months, 50*l.* at the end of third year, and 100*l.* at the end of the seventh year. The first 25*l.* is paid at four separate stages, 5*l.* on applying for Patent (upon which provisional protection is granted), 5*l.* on giving notice of intention to proceed with the application, 10*l.* on sealing, and 5*l.* on the final specification. This completes the Patent, and is accompanied by the charges of the professional agent for advising, preparing documents, drawings, &c. amounting on the average to about 20*l.* making with Government duties say 45*l.* to obtain a complete Patent in the first instance.

If the further duties of 50*l.* and 100*l.* are paid the Patent remains in force 14 years, but becomes void at the end of the third or seventh year if they are not paid.

In considering the cost of obtaining Letters Patent we must consider the duties (25*l.*) payable the first six months, apart from those payable afterwards, for it is this first cost alone which an intending patentee usually takes into account. He thinks his invention will surely show what its value is in three years, and it will then be time enough to consider whether or not he will invest 50*l.* to keep the Patent in force. This (first) cost is a question for the inventor in the first place and for the legislature in the second. In my opinion very few if any inventions remain unprotected and become lost because of the cost of a Patent being too great. From a legislative point of view it seems to me that the question should be answered by a reference to the number of Patents. Now the number of applications for Patents is about 3,500 per annum, or say 10 per diem, and I think that with that number it cannot be said that the cost of a Patent in any way checks the bringing out of inventions. One of the effects of reducing the costs of obtaining Patents would be to open the door to more of the "trifling" and "frivolous" Patents referred to in Question 5.

I do not think the first cost of a Patent should be increased. With regard to the later payments for *upholding* the Patent, 50*l.* at the third year and 100*l.* at the seventh year, it is my opinion that more revenue would be produced, and the payment of it be less felt by patentees, if there were substituted payments of 20*l.* each at the ends of the 3rd, 4th, 5th, 6th, and 7th years, and of 50*l.* at the 8th or 9th year. In the majority of cases three years is too soon for the invention to afford so heavy a tax as 50*l.* Further, when at present a tax of 50*l.* or 100*l.* is payable it is often a question with the patentee whether or not he will abandon his original Patent or take out a new one for some trifling improvement on his original plans. This is now often done although attended with great risk. It is quite a mistake though very common to consider the non-payment of these upholding taxes as proof of the inventions not having succeeded. Were each of the earlier separate upholding taxes much smaller than the amount required to get a new Patent the tax would be paid in many more cases than at present, and new Patents would *also be taken* for improvements of any real value.

By JAMES RICHARDSON & Co., Merchants,
Glasgow.

To diminish the cost of obtaining Letters Patent must, if there be no adequate provision for weeding out worthless or wanton intrusions, be prejudicial, because it will increase the numbers of what are practically hindrances in the way of manufacturers disposed to improve. There are many reasons for rather increasing the cost, one of which is, it will lessen the temptation to take out Patents without adequate previous investigation as to novelty.

There are some advantages in annual instalments, one of these being its tendency to let unremunerative and neglected Patents drop.

By EBENEZER HENRY, Manufacturer, Glasgow.
Diminished annual instalments.

By JOHN FINLAY, 46, Buchanan Street, Glasgow.

I think the present cost of Patents should be diminished, and that an annual sum during the currency of the Patent would be better than the present mode by instalments.

By JOHN RONALD, Merchant in Glasgow.

The cost of obtaining Patents should be as little as possible, and payable in one sum at the time the Patent is applied for.

By A. M. PATTISON, Esq., Agent for the Bridgewater Trust, Glasgow.

The present cost of obtaining Patents is moderate, and the system of payments good.

By MESSRS. MITCHELL and WHYTLAW, Manufacturers in Glasgow.

We think the cost of obtaining Patents should be reduced, so as to enable a poor man to patent a useful invention. The cost, including all expenses, we have found ever yet to be in round numbers 100*l.* If it was 50*l.*, and spread over two years, it might meet the above case.

By MESSRS. WALTER MACFARLANE & Co., Iron Founders, Glasgow.

The cost should be diminished not more than what is necessary to cover all expenses.

In three payments, namely, on granting, third year, and seventh year.

By the INSTITUTION OF ENGINEERS in SCOTLAND.

The first query may be subdivided into three. To the first part, A., "Should the cost of obtaining Letters Patent be diminished or increased?" eleven members replied in favour of the cost being diminished, and three against any alteration, the latter suggesting that the surplus revenue should be applied to benefit inventors or poor mechanics. As to B.,

"To what extent?" the eleven in favour of a reduction for the most part considered that the costs should be reduced to what would barely cover office expenses. As to C., "Should the payment be made in one sum, or by annual or other instalments?" about 18 were in favour of the present plan being retained, one in favour of annual and gradually increasing payments, and one in favour of a single payment.

Answers to Question 2.

By W. J. MACQUORN RANKINE, Esq.

Satisfactory on the whole. Such an investigation would be desirable, if practicable, but it would probably be found impracticable.

The probable impracticability just mentioned would arise in a great measure from the difficulty, if not impossibility, of forming a suitable tribunal. Such a tribunal ought to contain lawyers and men of science, and suitable members of those classes could no doubt be found; but in order to make it complete, it ought also to contain men practically acquainted with every branch of manufacture, and at the same time not personally engaged or interested in any manufacture, and it would be almost impossible to obtain suitable members of this class. The judgment ought to be final.

By EDMUND HUNT, Esq.

The manner in which Patents are at present granted appears to me most unsatisfactory, in respect that there is no check whatever upon the granting of Patents over and over again for the same thing. There ought most certainly to be a more searching investigation respecting each application for a Patent than at present, namely, respecting the *novelty*. The idea, however, of a *tribunal* and *judgment* (hinted at in this query) seems to me extravagantly wide of the mark. I do not know if the question of *utility* is contemplated in this query, but I do not believe that this question can be satisfactorily disposed of at any time, and much less in the infancy of an invention, by any official or judicial investigation. The question of utility, however, is more properly brought up by Query 5.

With regard to *novelty*, what is wanted is not a judicial decision, but simply the communication or publication of a fact. If the subject matter of a Patent is not new, or has been patented before, the more recent Patent is simply invalid and worthless as the law now stands. It seems to me simply honest and just, when the inventor asks and pays for protection for his invention, that he should be told whether or not protection has already been granted to any other person for the same invention. It is true that the Patent Commissioners now publish the Specifications of all Patents, and intending patentees can examine them to see if their inventions have been anticipated. The difficulty and expense of searching in this way is, however, often very great, as will be understood when it is mentioned that there are about 45,000 Patent Specifications at present in existence. If patentees were all to search for themselves, there would be an enormous waste of labour, and very uncertain and unsatisfactory results, whereas the thing would be comparatively easy, and much more certain and satisfactory, were such searches made by a staff of examiners permanently employed by Government, each individual of the staff confining himself to a particular subject, and of course being "well up" in it. A very large staff would not be required, and is not found necessary in the United States, where the system has been in operation for many years. (The American system has, however, the faulty feature attached to it of arbitrary decisions as to the granting or refusing of Patents being founded on the searches made.)

In my opinion the applicant for a Patent is entitled to the fullest information the office can afford him regarding previous Patents, *and that information*

should be as conveniently accessible to him as possible. To carry out these views a staff of examiners should be appointed by the Patent Commissioners, and a search as to novelty should be made by them respecting every invention sought to be patented. A report giving the result of the search, and stating the dates of earlier Patents bearing on the subject of his invention, should be given as soon as possible to each applicant, and he should be allowed to complete his Patent if he thinks fit. Then, supposing the present system of publishing each Patent Specification at the six months end to be continued, *the examiners report should be published along with the Specification for the benefit of the public, and as a check upon the patentees completing a Patent for something previously patented.* For some time past I have given a great deal of consideration to the plan suggested, and I believe its adoption would effect a very great improvement in the existing system. I would not have an extra tax imposed to cover the expense of this examining staff, as I think that extra expense can be well afforded by the present Patent revenue, and I think that the 5*l.* paid on applying for a Patent is quite enough to entitle the applicant to know whether his invention has been previously patented or not.

By Messrs. JAMES RICHARDSON & Co.

It appears possible to devise a system by which preliminary investigation may be dispensed with, for instance, the use of every patented invention might be thrown open to the public on payment of due fees, and at the point at which these fees shall be made payable, the proof of novelty might be required, as well as where parties differ, adjudication as to the rate or amount of these fees.

Whatever investigation is undertaken should be thorough. We do not see how it can be thorough, unless the best known manufacturers in the businesses within whose range the invention lies, are called in or consulted by circular to depone as to novelty or the reverse.

We are afraid of mischief from judgments being final, the tribunal should not be tied to all the formalities, and limited by the range of an ordinary court of law.

By EBENEZER HENRY, Esq.

Yes. Do not know. Yes.

By JOHN FINLAY, Esq.

The present mode of obtaining patents I think unsatisfactory. I think a preliminary board of investigation who would search into the originality of design, application, or invention, would be of great use and service both to the patentee and the public.

This board might also try the validity of alleged infringements on the rights of patentees.

As there is one law now for the whole kingdom, one board, sitting in London, might do the above and try all questions arising from patents and from whose decision there should be no appeal.

It is well known that there are plenty of eminent lawyers, who are well versed in science and mechanics, let such a one be appointed with two professors from colleges, say one of moral philosophy and mechanics and one of chemistry.

The decisions of three such persons every one would respect, were they unanimous, and if not unanimous an appeal might be allowed to the House of Lords.

By JOHN RONALD, Esq.

The present mode of obtaining Patents is not satisfactory. With the application for a Patent a pretty full if not a complete specification should be given in, and not as now a loose, vague one to lie over for a considerable time for amendment, which is injurious to other applicants.

By A. M. PATTISON, Esq.

Unsatisfactory Patents should only be granted for what are really inventions, something that embraces a new principle, and the Patent should include all

within that principle. There ought to be tribunals of men of note well versed in science and manufactures to decide on all applications for Patents, say three gentlemen in each department of science to judge and decide on the application for Patents in their several departments, their decision to be final.

By Messrs. WALTER MACFARLANE & Co.

1. No. 2. Yes. 3. An official body of scientific and practical persons whose duty it would be to say whether the invention sought to be patented is old or new, leaving the applicant to determine whether he will take out the Patent or not—appeal not desirable.

By the INSTITUTION of ENGINEERS of SCOTLAND.

The second query may be subdivided into four. As to A, "Is the present mode of obtaining Letters Patent satisfactory?" All present (about twenty) replied in the negative. As to B, "Should there be a more searching preliminary investigation?" All replied, "Yes, as to novelty;" one adding, "And utility also." As to C, all replied that, "The investigation should be conducted by a board of scientific and practical men." As to D, all agreed, "That there should be no final judgment or refusal of a Patent, but the report of the examining board should go to the public with every patentee's printed specification."

Answers to Question 3.

By W. J. MACQUORN RANKINE, Esq.

The investigation, if any, should be private.

By EDMUND HUNT, Esq.

A reply in part to this query is involved in my reply to Question 2. I think the present practice as to caveats and oppositions may be advantageously dispensed with, if for no other reason, simply because the provisions for opposing are at present hardly ever availed of. In my own experience not more than two Patents in every hundred are opposed. 5*l.* is at present paid at the opposition stage, and if the total cost of the Patent is not to be reduced, I would omit this stage with its payment of 5*l.*, and make 15*l.* instead of 10*l.* payable on sealing.

By Messrs. JAMES RICHARDSON & Co.

We think it doubtful how far caveats ought to be adhered to. Pilfering of inventions while under process of maturing might be made penal, if followed by the act of patenting.

By EBENEZER HENRY, Esq.

Public. Subject to opposition.

By JOHN FINLAY, Esq.

Patentees and infringers might be heard themselves, or by counsel. Caveats while before the Courts are good.

By JOHN RONALD, Esq.

If any person thinks he has a right to object to the granting of a Patent, he ought to have good opportunity given to him to do so, but, if unsuccessful, he should pay the whole expenses of both sides.

By A. M. PATTISON, Esq.

Public and subject to opposition: caveats to be continued.

By WILLIAM BROWN, Esq., Merchant, Glasgow, to Questions 1, 2, and 3.

If the present system of granting Patents is to be continued, I think the mode of proceeding and the fees that are charged are reasonable and fair.

An open investigation would, I conceive, defeat the ends in view.

By Messrs. WALTER MACFARLANE & Co.

1st. Public: only subject to opposition on the ground of infringing on a prior Patent. 2nd. Yes; the present practice is quite satisfactory, having ourselves had occasion to bring a case before the late

Solicitor General, Sir Hugh Cairns, we had ample opportunity of forming an opinion, the process is short, simple, and effective.

By the INSTITUTION of ENGINEERS in SCOTLAND.

A reply to the third query was generally acquiesced in to the effect that "the investigation should be public, and only subject to opposition on behalf of earlier Patents, in which case the present system of caveats would be superseded."

Answers to Question 4.

By W. J. MACQUORN RANKINE, Esq.

Yes; but not greater than attends the working of many other useful institutions.

By EDMUND HUNT, Esq.

Not as yet; the *public*, apart from inventors and patentees, is, as far as my observation goes, quite apathetic regarding patent law reform. As bearing on this point, it may be noticed that the number of law trials for infringements of Patents is astonishingly small, when it is considered what an immense number of Patents are in force.

By Messrs. JAMES RICHARDSON & Co.

There is much inconvenience from the multiplicity of Patents. We want some system by which a variety of Patents affecting a particular business might be combined in the matter of fees or remuneration for use.

The present system gives no facility for such a public accommodation, and therefore makes the multiplicity a nuisance.

The very inspection of thousands of Patents is a labour few can undertake, even though they had access to libraries where the series of Patents are kept. This latter inconvenience might be greatly modified if there were a yearly, half-yearly, or quarterly publication of the Patents at any one time in force, and especially a much more definite and demonstrative classification than has yet been effected. A proper classification involves the arranging of Patents under heads corresponding to every one of the principal employments of our country, in the several departments of agriculture, mining, manufacturing, shipowning, &c., &c. Of course the same Patent might appear under a great number of these separate heads.

By EBENEZER HENRY, Esq.

Yes.

By JOHN FINLAY, Esq.

No.

By JOHN RONALD, Esq.

Far too many Patents are applied for, and very many of them are not carried out to the obtaining of the Patent; but if people will apply for them, let them do so, that is their affair. This would to some extent be corrected if my views on questions 1st and 2nd were attended to.

By A. M. PATTISON, Esq.

Very serious inconvenience; every application for a Patent at present seems to be granted, though all that is claimed is but the very slightest alteration from something in previous use. Many of the Patents if tried at law would never stand, but under threats of proceedings at law, royalties are often paid rather than have the expense of a lawsuit and the loss of time from business that is necessary to contest it. Also merchants and consumers of many patented articles are often unwittingly led into an infringement; the Patent claimed is a certain way of producing the article or a substance used in producing it; there are often six or eight Patents for the various ways of producing it, or of the substances used; when produced the article by them all is almost the same, in many cases the same in appearance. A merchant or consumer buying from one of the patentees, is liable for infringement should the maker

have produced it by any other process than his own, if it is a process patented by another. If the Patent laws had granted to the first inventor of that class of goods to embrace all the processes under his Patent, the public could never then be misled.

By WILLIAM BROWN, Esq.

I think the multiplicity of Patents is the cause of much inconvenience.

By Messrs. THOMAS WINGATE & Co.,
Builders, Partick.

Yes.

By Messrs. WALTER MACFARLANE & Co.

No.

Answers to Question 5.

By W. J. MACQUORN RANKINE.

No.

By EDMUND HUNT.

As stated in reply to 2, this query raises the question of *utility*. No examining board can satisfactorily pronounce on the utility of an invention. There is no broad and well-marked step between what may be trifling or frivolous and what may be useful. The qualities gradually merge into each other, and no *line* can be drawn. Whether a new contrivance or plan for any imaginable purpose is patentable or not, is a question of principle, not of size, degree, value, or importance. An alleged improvement can be measured with accuracy *by practical trial alone*. A practical worker in some *one* department may be able to form beforehand a very accurate idea whether a new contrivance will prove valuable or not in *his* department; but the necessary practical experience in *all* departments could not be *condensed* into the limits of a board of examiners. It is no doubt true that many Patents are taken out, not only for trifling and frivolous things, but also for things having the best objects in view, but ignorantly conceived and certain to fail on trial; but it seems to me that the way to avoid such Patents being taken is to alter the law, by which at present a Patent is invalid if the inventor happens to have published or publicly used his invention before applying for a Patent. To my mind the present system is, in this respect a mere lottery. Inventors rush to patent the wildest schemes before trying their feasibility, from fear of an experiment invalidating the Patents. It should be enacted that a Patent shall not be invalidated by the use of the invention privately or publicly by the inventor or by any one obtaining the knowledge of it from him for a period to be determined (say six or twelvemonths) prior to the application for the Patent. Inventors would thus be free to try their plans in safety before throwing away money in patenting them, and in this way trifling, frivolous, and mistaken schemes would get weeded out. *Moreover valuable improvements which are now unpatented and lost would be rescued*. It may be mentioned that a clause equivalent to the one proposed was introduced into the Patent Act for India, passed two or three years ago. The ideas of a *tribunal* and *judgment* referred to in Question 2, are involved in the subject matter of this Question 5. We can only understand the working of a *tribunal* and a *judge* when there is some *wrong* to be righted, some *crime* to be punished, or some *dispute* to be settled. The question to be considered in connexion with the granting of a Patent is that of *rewarding* inventive *merit*. Apart from all this if one invests money in a Patent for a trifling or frivolous invention, *no one is inconvenienced, nobody is a loser but himself*.

Postscriptum. The idea of a *tribunal* and *judge* in connexion with the granting of a Patent is opposed to the British constitution, inasmuch as in that constitution there is nothing analogous to it. The exclusion of trifling and frivolous Patents is *unquestionably desirable*; the difficulty is, how to effect it

satisfactorily? Finally, many of the other improvements suggested herein will certainly reduce the number of objectionable Patents.

By Messrs. JAMES RICHARDSON & Co.

Under a judicious system which shall assign a limit to the remuneration of each separate patentee according to a just appreciation of his invention, trifling and frivolous inventions might be tolerated. We would recommend, however, one condition; that in all cases the expense of proving the novelty and appraising the value, should be borne by the patentee.

By EBENEZER HENRY, Esq.

Yes.

By JOHN FINLAY, Esq.

Yes; if trifling or frivolous, but not if improvements.

By JOHN RONALD, Esq.

I think such should be at once refused.

By A. M. PATTISON, Esq.

Most certainly.

By THOMAS WINGATE & Co.

We do not think Patents should be granted for modifications of other people's Patents, these modifications being generally got up to evade the original Patent right.

By Messrs. MITCHELL and WHYTLAW, to Questions 2, 3, 4, and 5.

We think it would be an improvement if a constituted body had the power, before a Patent could be taken out, of deciding whether the proposed Patent was too trifling and frivolous, and also might give public notice when a Patent was applied for, so that interested parties might object if they thought the proposed Patent was a piratical infringement; but this latter inquiry need not be final. Such a court to be in the larger towns. This preliminary investigation would be useful in a not uncommon case at present, viz., when a party has a Patent, for another party to set themselves about exactly how to avoid said Patent, it may be by some trifling change in the arrangement, and then apply for a Patent of their own, which is granted, and then the first party, to obtain redress, must take the risk, it may be, of an expensive law plea. The fact that advice is taken from a Patent agent, who has an interest in encouraging every one to take out a Patent, is a great cause of the multiplicity of Patents.

By Messrs. WALTER MACFARLANE & Co.

No. The most learned and intelligent may think it trifling and frivolous, and yet the invention may produce great results.

Answers to Question 6.

By W. J. MACQUORN RANKINE, Esq.

Yes.

By EDMUND HUNT, Esq.

If other proposed improvements are carried out, greater facilities for repealing invalid Patents will not be required.

By Messrs. JAMES RICHARDSON & Co.

The sooner invalid Patents are cleared off the better. There should be no expense thrown on the patentee in effecting the riddance, but on the contrary, a part of the original expense might be repaid as an encouragement to every man to act justly or liberally in terminating doubtful or valuable Patents.

By EBENEZER HENRY, Esq.

Yes.

By JOHN FINLAY, Esq.

A court such as above, if shown cause, should have power to annul Patents.

By JOHN RONALD, Esq.

Any Patent which is of no use, or has not been carried into use, should be repealed within a short time after being granted, so as not to perplex other inventors.

By A. M. PATTISON, Esq.

Every possible facility should be given.

By Messrs. THOMAS WINGATE & Co.

Yes.

By Messrs. MITCHELL and WHYTLAW.

No.

By Messrs. WALTER MACFARLANE & Co.

We are not aware of greater facilities being required.

By the INSTITUTION of ENGINEERS in SCOTLAND to Questions 4, 5, and 6.

To the fourth question, the general reply was, "Yes;" to the fifth, "No;" and to the sixth, "Yes."

Answers to Question 7.

By W. J. MACQUORN RANKINE, Esq.

The question is in a great measure a legal one, which I am not prepared to answer fully.

By EDMUND HUNT, Esq.

In my opinion Patent cases should be tried by special juries, selected with a view to the jurors' thorough acquaintance with the branch of manufacture to which each Patent relates. The evils likely to arise from trade prejudices would be far from outweighing the advantages over the present system.

By EBENEZER HENRY, Esq.

Yes.

By JOHN FINLAY, Esq.

Yes.

By JOHN RONALD, Esq.

It should be simple and inexpensive.

By A. M. PATTISON, Esq.

Men of public reputation in each department of science would form the best tribunal to try the actions instituted by patentees. The actions should be brought before them with as few preliminaries as possible, so that the action may be decided at once.

By Messrs. MITCHELL and WHYTLAW.

Do not see what change could be proposed, although the present system is very bad.

By WALTER MACFARLANE & Co.

Yes; the Scottish Courts especially are tedious, expensive, vexatious, and unsatisfactory to patentees, and it would be very desirable to have a Patent Law Tribunal, or Court for the trial of Patent cases.

By the INSTITUTION of ENGINEERS in SCOTLAND.

To the seventh query a reply was generally acquiesced in to the effect that "A cheaper and more expeditious and satisfactory mode of trying Patent cases is urgently called for, and that it is desirable to secure juries better qualified than present ones to try such cases."

Answers to Question 8.

By W. J. MACQUORN RANKINE, Esq.

It might be useful to empower courts of law to compel patentees to grant licences upon good cause being shown by the applicant, provided the applicant were at the same time compelled to give security for the payment of the licence duty.

By EDMUND HUNT, Esq.

In my opinion compulsory licences are most desirable, particularly in cases where licences are wanted

to admit of the working of further improvements. A person who happens to be in possession of a paying patent is apt to obstruct further improvements in the same department. The object of the legislature should be to encourage improvements of all kinds as much as possible. It is, however, unfortunately very difficult to find a satisfactory method of making the granting of licences compulsory. I have considered several plans, and the only one which has seemed at all feasible involves, I fear, too radical a change in the system of taxes upon Patents. I would make it compulsory on every patentee to give notice at the Great Seal Office at the end of, say three years, of his charge for licences, and to prevent his making this charge so high as to be virtually a refusal. I would substitute for the present taxes of 50*l.* at the third year and 100*l.* at the seventh year, a species of patent income tax calculated on the patentees own licence charge, and upon a return required from him annually, or at other periods of the number of patent machines used by himself or his licencees (whilst if the subject of the patent is not a machine, the return should state the extent to which the invention is used in some other equivalent manner). Observe that in addition to providing for compulsory licences, this system of taxing would be more generally just than the present uniform tax for every patent, which is as much for a patent yielding 100*l.* a year as for one yielding 1,000*l.* or 10,000*l.* a year.

By MESSRS. JAMES RICHARDSON & Co.

No patentee should be at liberty to refuse a licence. Where the parties cannot agree as to the rate, there should be recourse to arbitration.

It might be well to allow every person at once to use any patented invention under an obligation to immediately communicate to the Patent officials the fact that he is doing so, in order that they may record or report to the patentee if they can. Patent holders are often so indifferent or tardy or difficult to find out that such legalization may fairly be established. The onus of managing their Patents should be thrown on the patentees.

By EBENEZER HENRY, Esq.

Yes; but don't know the method.

By JOHN FINLAY, Esq.

No; the tribunal before whom the claim is made should have power to refuse or grant.

By JOHN RONALD, Esq.

When a Patent is obtained, it becomes the property of the patentee, and he should not be *compelled* to grant licences.

By A. M. PATTISON, Esq.

If Patents are only to be granted for inventions that bring forward an entirely new principle, licences ought to be made compulsory. As to how this should be done, perhaps, the best way would be for the tribunal which grants the Patent, to fix the amount to be charged, and how it was to be levied, &c., &c., subject to their revision in three, seven, and ten years. At the revisals, the public to be allowed to appear and show cause for reduction of licence rates. With the present law licences are not necessary.

By WILLIAM BROWN, Esq., to Questions 5, 6, 7, and 8.
I am not able to answer these.

By THOMAS WINGATE and Co.

Yes; we think the granting of licences should be compulsory.

By MESSRS. MITCHELL & WHYTLOW.

No.

By MESSRS. WALTER MACFARLANE & Co.

Certainly not; a patentee has a right to consider his invention as so much property, and should not be compelled to grant licences against his will.

By the INSTITUTION of ENGINEERS in Scotland.

To the eighth question, two replied in the negative, and ten in the affirmative; but in reference to a practical method of rendering licences compulsory, nothing was offered beyond a suggestion, that if a board was organised to decide as to utility, the same board could also decide the royalty chargeable in each case.

Answers to Question 9.

By W. J. MACQUORN RANKINE, Esq.

No; unless to the inventor's agents or assignees.

By MESSRS. JAMES RICHARDSON & Co.

If Patents are granted to importers of foreign inventions it should be but for a very short period.

By EBENEZER HENRY, Esq.

No.

By JOHN FINLAY, Esq.

Yes; if manufactured in this country, but not to the exclusion of the foreign inventor, who, I think, should not be excluded from making his own invention here, or of importing the same, though already patented by some copyist.

By JOHN RONALD, Esq.

Yes; if foreigners do the same to us.

By A. M. PATTISON, Esq.

I think not.

By MESSRS. THOMAS WINGATE & Co.

No.

By MESSRS. MITCHELL and WHYTLOW.

Yes.

By MESSRS. WALTER MACFARLANE & Co.

No.

Answers to Question 10.

By W. MACQUORN RANKINE, Esq.

Yes.

By EDMUND HUNT, Esq., to Questions 9 and 10.

These questions may be replied to jointly. Considering that the object of patent legislation is to encourage the practical introduction in this kingdom of all possible improvements in arts and manufactures, I think the patenting here of foreign inventions should still be allowed. A foreign invention, however, should not be patentable except in the name of the original inventor, or his nominee or assignee; for, say, one to two years after its publication abroad. After that period it should be patentable by anyone, as long, of course, as it may remain unpublished in this country.

By MESSRS. JAMES RICHARDSON & Co.

If a radical reform is introduced, foreigners who are real inventors (a point difficult to prove) may safely be allowed to patent, directly or through nominees.

By EBENEZER HENRY, Esq.

No.

By JOHN FINLAY, Esq.

I think foreigners should be entitled to protect their inventions on the same terms as natives, so that they work them and make them generally available.

By JOHN RONALD, Esq.

Yes; if foreigners do the same to us.

By A. M. PATTISON, Esq.

Yes.

By WILLIAM BROWN, Esq., to Questions 9 and 10.

I think Patents ought not to be so granted.

By MESSRS. THOMAS WINGATE & Co.

No.

By Messrs. MITCHELL and WHYTLOW.

Yes.

By Messrs. WALTER MACFARLANE & Co.

Yes.

By the INSTITUTION of ENGINEERS in Scotland, to Questions 9 and 10.

To the 9th Question, "No" was generally replied, and to the 10th, "Yes."

Answers to Question 11.

By EDMUND HUNT, Esq.

I do not think that any change is called for in the law relating to prolongations and confirmations.

By Messrs. JAMES RICHARDSON & Co.

Patents cannot safely be prolonged beyond the period of expiry in other countries.

However questions such as the foregoing may be answered, the grand cure obviously is a Government grant, or else such a shortening of the term of monopoly, and such a limitation of the amount of charge, that patentees may, under the present law, make, as will render it practicable for British manufacturers to compete with foreigners who may be liable to no patent charge, or charges much lower than those exacted in this country.

Free trade and unrestricted competition render the present system untenable, unless indeed all countries were combined in one comprehensive system, the very magnitude of which would render it unworkable, and cause it to break down.

By EBENEZER HENRY, Esq.

Cannot say.

By JOHN FINLAY, Esq.

I think the present duration of a patent, 14 years, is long enough, but would leave it in the power of the Court when cause is shown to prolong it.

JOHN RONALD, Esq.

I would give no prolongation after the time fixed in the Patent.

By A. M. PATTISON, Esq.

I think not.

By WALTER MACFARLANE & Co.

Cannot give an opinion as to this.

By the INSTITUTION of ENGINEERS in Scotland.

The 11th query may be subdivided into two. As to A., it was generally considered that the law as to prolongations should remain as at present, one member, however, thinking that prolongations should be done away with, and the duration of a Patent be altered from 14 to 17 or 21 years. As to B., it was generally held that "confirmations" should be done away with.

Answers to Question 12.

By W. J. MACQUORN RANKINE, Esq., to Questions 11 and 12.

These questions are chiefly legal, and I am not prepared to answer them fully.

By EDMUND HUNT, Esq.

I think patentees should be allowed to enter disclaimers and memoranda of alteration without the troublesome and expensive proceedings at present required to obtain the law officer's fiat. Of course as at present a patentee must not be allowed in any way to extend his Patent, and his disclaimer or memorandum must contain his declaration, as at present, that it is not to be construed as extending the Patent. Any new Act should also contain a clause enabling a patentee in his final specification to disclaim, not only matter in his provisional specification filed six months previously, but also a portion of the title.

It would also be of great advantage in many ways for a patentee to be allowed to include in his final

specification improvements occurring to him during the six months, provided they are such as might properly have been included in the same provisional specification and provided he distinguishes those improvements in his final specification from the others.

The claims for these added improvements should be held valid or invalid on the ground of novelty or the want of it, with reference to the date of the final specification instead of the date of the provisional specification.

In conclusion I would observe that none of the queries bears on one important point—the unauthorised use of the word "PATENT." There is at present no law against the use of this word, whilst penalties can be enforced against the marks or word "Registered" applied to registered designs. Patent property would generally assume a much higher position than it now has if it were made illegal to use the word without a patent. It should be enacted that whenever used it must be accompanied by the date and number of the Patent or Patents referred to, and its unauthorised use should be made to incur a heavy penalty.

By EBENEZER HENRY, Esq.

Do not know.

By JOHN FINLAY, Esq.

When any weak point or points are shown in a Patent which does not affect the originality, I think the power of disclaiming such parts, a very useful one.

By JOHN RONALD, Esq.

I would let the Patent stand or fall according to the first specification.

By A. M. PATTISON, Esq.

No. My daily experience leads me more and more to the conviction that there should be no Patent laws, the poor man would make much more on the average by selling his invention as a secret, and the wealthy inventor could keep his secret long enough to give him a decided lead in the market with it. Very many commercial firms think it no moral wrong to invade Patents considering them unjust monopolies; others who abide by the laws are placed at a disadvantage; also patentees have great difficulty in getting sufficient proof of infringement to enforce their rights by law, often it can only be got by bribing the workmen of the factory where the infringement is going on. As to the opinion that there would be few inventions if there were no Patents, it cannot bear investigation, competition in business is too great for that to happen, and science is making too rapid strides.

By WILLIAM BROWN, Esq., to Questions 11 and 12.

I have no remarks.

If I am permitted to make some general remarks, I should say on the whole subject I am of opinion that the abrogation of the Patent laws might be for the advantage of all parties, provided there was a tribunal for judging of important inventions in *mechanics* and in those matters which may be imitated whenever they are seen, and for awarding suitable premiums for the publication of such invention. But that the inventions of new and important *processes* for the manufacture of chemical and other products which can be kept secret should be left to sell their products and processes to the best advantage in any way they choose. Patents for processes are pirated right and left, without almost the possibility of detection, and that avowedly, and by extensive and wealthy manufacturers.

Thus, I was with a friend who had just secured a Patent for an improved process in dyeing. We were at Leeds, trying to get it brought into use. One of the most extensive dyers said, "I will wait till I see thy specification, and if there is anything in it I think will be of service to me, I will adopt it, and never ask thy leave."

On the other hand, a manufacturer discovers some simple improvement in his mode of working, and adopts it secretly, but without taking a Patent for it. A stranger finds out what it is, secures a Patent, and then demands of the first inventor either to cease from using it, or take a license from him. I have known an instance of this and no redress.

I have no fear that the talent, energy, and capital of this country will suffice to enable its manufacturers to keep their ground, and that the competition between one manufacturer and another will so keep down prices as to protect the interests of the public.

If the whole annual profits made by means of Patents could be ascertained and compared with the annual sum expended in acquiring and defending Patent rights I think it would be found that the Patent Laws instead of being a source of gain are the cause of a heavy loss to the community.

By Messrs. MITCHELL and WHYTLAW to Questions 11 and 12.

Not prepared with any opinion.

By Messrs. WALTER MACFARLANE & Co.

An appeal should be allowed to the Lord Chancellor or Privy Council. We think Patent rights should be conferred for not less than 21 years.

By the INSTITUTION of ENGINEERS in SCOTLAND.

A general reply was given to the effect that "the expenses connected with disclaimers and memoranda of alterations should be reduced."

ANSWERS by the PHILOSOPHICAL SOCIETY OF GLASGOW to the QUERIES issued by the CHAMBER OF COMMERCE OF GLASGOW.

DEAR SIR, Glasgow, Feb. 11, 1864.

REFERRING to the circular forwarded by the President of the Chamber of Commerce to the Philosophical Society, dated 29th January 1863, I am directed to inform you that a Committee was nominated to report on the questions proposed by the Royal Commissioners appointed to inquire into the operation of the Patent Laws, but from various causes were unable to give in their report before the Session closed in April last. The subject was again brought up when the Philosophical Society resumed its sittings in November, but no opportunity

ANSWERS by E. A. COWPER, Esq.

35a, Great George Street, Westminster, S.W.,
4th June 1864.

MY LORD AND GENTLEMEN,

I FEEL that some apology is due from me in consequence of my not having immediately responded to your invitation to send in such evidence as I felt I could give, on the working of the present Patent Laws, and in answer to the printed questions I had the honour to receive from you. I beg therefore now, before the first sitting of your honourable Commission this session, to submit my answers, together with one or two practical suggestions that have forced themselves upon me in the course of my professional practice as a Consulting Engineer.

I conceive it to be altogether unnecessary to take up any time with evidence in reference to the very great use of Patent Laws generally, as it is acknowledged by every class in the nation, including manufacturers, inventors, and the public at large, that the operation of such Laws act as a great stimulus on all persons of an inventive turn of mind in causing them not only to direct their thoughts to new applications of the Laws of Nature, but in leading them to spend their time and money in bringing to bear in a *practicable manner* any crude idea or thought that strikes them, and thus the manufactures of the country are constantly improved, and the public reap the advantage of a constant progress in the industry of the country; indeed, in view of the progress that is now being made by other countries (and which is far

has occurred of discussing it until last night. The society fear that any opinions expressed by them may now be too late to influence the report of the Commissioners,—nevertheless I am requested to hand you a copy of the answers adopted by the society, which you can make use of, or not, as you deem proper.

(Signed) WM. COCKEY,
for the Secretary of the Glasgow
Philosophical Society.

1. There do not appear to be sufficient reasons for materially altering the preliminary cost of obtaining Letters Patent; but we think that the sum of 50*l.* now payable at the end of the third year, should not be exacted until the end of the fifth year, and that no further payment should be required.

2. The present system of obtaining Patents is undoubtedly not satisfactory. We are of opinion that there should be a preliminary investigation as to novelty, the result of such investigation being made public, but not to be absolutely final.

3. Our reply to the last question disposes of this one, except as regards opposition, with respect to which we think that the facilities at present granted to intending opponents have been so little taken advantage of that it is doubtful if increased facilities are necessary.

4. Yes.

5. Yes. If any practicable method can be found for deciding on what are frivolous inventions.

6. Yes. To the extent of reducing the costs of proceedings for obtaining under repeal.

7. We are of opinion that the juries appointed to try Patent cases should be composed exclusively of scientific and practical men conversant with the subjects in dispute.

8. We do not see our way to suggest any practicable system of compulsory licences, but we think such a system would be very desirable if a suitable one could be found.

9, 10. The following answer applies to both the above queries. We think that Patents should still be granted for foreign inventions, but that care should be taken to insure the granting of the privilege strictly to the original inventor, or to parties properly deriving their rights from him.

11, 12. To both the above queries we can simply reply that something might probably be done to lessen the cost of proceedings.

greater than meets the eye or is commonly known) it would be perfectly suicidal to cause the least check or discouragement to the practical application of the inventive talent of this country.

The amount of perseverance, exertion, expenditure of time and money that is always going on in *attempts* to improve manufactures (none of which meets the public eye or is known to other than those actually engaged or consulted on such matters) is almost incredible, but no grumbling or dissatisfaction is expressed by the parties, as they feel they have not been set to do such work by any taskmaster (and in fact no taskmaster however despotic ever *could make men work as they do now*), but have simply been pushing or backing their own ideas, which they of course thought were correct.

Invention can be encouraged, but cannot be driven, and as a simple proof may be mentioned, the well-known fact that the first Napoleon having ordered his eminent chemists to find out a cheap way of making saltpetre, and having kept them closely engaged on their task for a length of time, received at their hands simply the invention of making soda from common salt, which is no doubt a highly useful invention, but not the one that was to have been schemed to order.

The present Patent Law of 1852 has worked remarkably well on the whole, and were the Act fully carried out (which it most certainly is not at present) most of the complaints now made (some of which are

of the most frivolous character, and are urged only by persons entirely ignorant of the working of the Patent Laws) would cease altogether, and a more wholesome state of things would ensue.

The great resources of the various textile manufactures of the country have been very fully brought out during the recent cotton famine, and rather than run any risk of causing a check to the rapid strides that are now being made in improving all manufactures, it would be far better, simply to put the *present Patent Laws into full operation*, as it would then be possible for any inventor, or person supposing himself to be an inventor, to go to the Free Library and sit down for about half a day's careful study, and by means of the indices, abridgments, books of reference, catalogues, and lists that would then be found there, at once satisfy himself that in all human probability his invention was old or new, as the case might be. The Patent Law Amendment Act of 1852, Section 4, enacts that there shall be built "proper places" or buildings for an office or offices for the purposes "of this Act," and it is difficult to conceive any valid reason for such part of the Act as relates to the buildings remaining a dead letter to this day. Of course the first point that it is necessary to settle is that of site, but I believe a good site could be as easily obtained by Her Majesty's Board of Works as it is by any large company, whether a railway company or such an one as the Westminster Palace Hotel Company, for with money in hand there is never much difficulty in obtaining land, even in London. I am of opinion that any good site of sufficient size, say of 7,500 square yards at least, between Westminster and the Temple, would answer the purpose, and therefore the Fife House site, Whitehall, would do very well, though I believe there would be some advantage in the new offices being nearer the Record Office, where all the old original parchment Specifications are deposited. The main point to be considered in fixing upon a good site is, that it should be as central as possible, for those persons who have to use it are all business men and not amateurs.

I have very fully examined the question of site, and considering that all persons who have occasion to go to the Patent Office Library or Museum are business men whose time is valuable, and not simply idle persons with time on their hands, I am quite sure that nothing could be more fatal to the usefulness of either of the three departments of the Patent Office than their removal to Kensington; indeed, no one whose time was of the least value would waste it by going there and back, if he could possibly avoid it by any means; and it must be remembered that there is hardly a single manufacturer in that neighbourhood, and no merchants, engineers, chemists, or mechanics; indeed, the East, North, and the South of London are almost exclusively the business parts, and contain all the residents who have any occasion to examine works or models at the Patent Office; even the railway stations are without exception nearer to Whitehall Place than to Kensington, and there are no hotels at Kensington where a person from the country could stop; this of itself proves there is no business transacted in that neighbourhood.

Indeed I believe an acre in London would be infinitely to be preferred for a site to five acres at Kensington; in fact, Kensington would not answer the conditions of the Patent Law Amendment Act of 1852, as offices for business could in no sense be called "proper offices" if located miles away from all business.

I am clearly of opinion that a great deal more must be done to make the Patent Offices more complete before it can be said that "proper places or buildings" for an office or offices for the purposes of the Act have been provided as the Act of 1852 directs.

I estimate that from 7,500 square yards to 8,000 square yards are required for the Patent Offices, including the Free Library, Reading Room, and Museum, though no doubt some years hence additional space would be required for the Museum if

that department were properly administered; but 8,000 square yards would do very well for some years to come. Of this space about 3,500 square yards would be required for the offices, and the rest, or 4,000 to 4,500, for the Museum. I am further of opinion that unless immediate measures are taken to improve the whole working of the Office great injury to our manufacturers will occur from the competition which is carried on so assiduously by continental nations.

I mean in the technical education of manufacturers and artisans; and I would first of all call attention to the well known fact that some 40 to 60 years ago England was almost the exclusive mart for all machinery, whether cotton or flax, sugar mill, steam engine, &c., or even for crude pig iron, and as recently as 30 years ago printing machinery, and still later (*viz.*, scarcely 10 years ago) locomotives were all exported from England to France, Germany, &c.; but now other countries, particularly France, Germany, and the United States, have taken in hand the collection and publication of inventions of all kinds, gathered to a great extent from this and other countries; we may find there better printed engravings and descriptions of machines and processes used in *this country* than can be met with at home. I may notice that the fear of our being outstripped in some branches of mechanical manufacture is therefore not altogether so imaginary as might at first sight be supposed, and we have only to turn to Switzerland to see for what a very small sum they make the works of a watch, or to remember that 200 or 300 years ago, when civil engineering was to be done here, it was not unusual to send for Dutchmen, Frenchmen, or Italians to design the works.

I firmly believe that by a slight extension of the present organization of the Patent Office, and by a judicious expenditure of the surplus funds (which have been contributed by the "*very persons*" who now require the proposed instruction), there may be greater and more rapid strides made in the improvement of our manufactures than there have been within the last few years in the applications of Fine Art to manufactures capable of embellishment or of exhibiting beauty of form. It is true that the Schools of Design have done something by *actual instruction* of pupils, but without the good *models and specimens* that were diffused throughout all the leading cities and towns in this country it would have been impossible to develop such good taste as we often now meet with in our manufactures; but with regard to mechanical processes, modes of working and contrivances in machinery, they require *no such tuition* as art necessitates, but can be at once *seen and appreciated* by any person of common intelligence in the particular trade, as soon as a good *model* or a drawing and Specification or description is before him; and I have no hesitation in saying that if every manufacturer in this country had *clearly put before him*, by models and otherwise, the *very best known mode of working*, in his own particular trade, in 99 cases out of a 100 he need not fear competition from any foreign country, but would be in the *very best possible position*. The immense advantage to the nation generally, from our manufacturers being put in such an advanced and commanding position could hardly be overrated, and would tell effectually in all directions, in some trades in an improvement in the quality or usefulness of the finished article, in some in a reduction of cost of making, and consequently of the price paid by the public, in others in a reduction of the cost of the raw material, and in all in an increased employment of our people.

I would submit that "proper places or buildings" for an office or offices for the *purposes of the Act* most certainly includes all reasonable means of making known and *disseminating the knowledge of inventions amongst our people*, and if any confirmation of this view could possibly be required by any person conversant with the general nature of manufactures and their improvements, it would at once be

furnished by the high authority of some of our most distinguished Lord Chancellors, Solicitors, and Attorneys-General, and the learned Master of the Rolls, together with the very able Superintendent of Specifications, and most of the witnesses examined before the Honourable Committee of this House in 1851, all of whom have sanctioned in a decided manner the printing of all Specifications and the preparation and printing of books of Abridgments of Specifications and the publication of the whole at cost price to the public, besides the gratuitous distribution of a complete set to every large city and town in the country where such books may be examined gratis, the formation of a scientific library of the most complete character, to include *all* foreign scientific books and periodicals, such library to be a free library, open to the public under proper regulations, and the establishment of a public reading room where such a valuable mass of knowledge might be made available, together with a large and complete museum of *models of all* the best and most important inventions, like the "Conservatoire des Arts et des Métiers," at Paris. It cannot be denied that the use of good models properly designed for instruction (and not as showy advertisements) is a means of quickly reaching the intellect of most people, and indeed there are many persons (amongst whom are most artizans) who *cannot* comprehend at all a new machine without a model, or the thing itself before them, and in fact I have known barristers of the highest standing who would hardly read a Specification in a Patent case until they had seen a good model of the invention in dispute.

It is a fact that should not for a moment be lost sight of, that succeeding Commissioners of Patents, fully alive to the *great want* that has existed of a good and complete office for some years, and which is now becoming a *most pressing necessity*, have from time to time *reported* to the Lords Commissioners of Her Majesty's Treasury *this necessity*.

In April 1855 the Commissioners of Patents stated that "a largely increased accommodation was *urgently required*," and requested the Lords Commissioners of Her Majesty's Treasury "to sanction the application of a sufficient portion of the *surplus* now derived from the *fees paid on Patents* for the purpose of accomplishing the objects above-mentioned, &c., &c." This report was sent by their Lordships "immediately to Her Majesty's Board of Works, with instructions that a convenient site should be provided for the proposed *New Offices, Public Library, and Museum*, and also that plans and estimates should be prepared for Parliament."

"In 1859 the Lords Commissioners of Her Majesty's Treasury and the Chief Commissioner of Her Majesty's Board of Works, approved of a site for this purpose, lying at the northern extremity of the gardens at Burlington House."

Plans and estimates were prepared by Messrs. Banks and Barry, so that these buildings should form a part of one complete design of the public buildings intended there; but unfortunately this plan has, for the last five years, been put aside, and no other site has been provided. And the last report on this subject that I am acquainted with, viz., that of 7th August 1862, pointed out the lamentable inconveniences that existed in the Patent Office at that time, and described them in the very words of the memorial that was presented to the Commissioners in reference to the building of a proper office for the purposes of the Act, and for the rescinding of an order that it was understood had been given out, for the *discontinuance* of the reception of certain scientific *periodicals*, *because there was not room for them in the Office*.

It was felt at that time by all scientific men or manufacturers, who became aware of this uncalled for injury that was about to be inflicted on the completeness of the library, that such a matter ought at once to be taken notice of, and in two or three days some 46 gentlemen sent in a remonstrance against the pro-

posed curtailment of the library "for want of room," knowing as they did, that there was an enormous accumulation of funds available for the purpose, and which could not be considered as a surplus applicable to any other object, until all the requirements of the Office established for the purposes of promoting invention had been satisfied.

It has never been suggested, and most certainly has not been intended by this Honourable House to lay a tax on inventors, or in any way to discourage them in the improvement of our manufactures. On the contrary, it has always been held to be sound policy to stimulate improvement as much as possible; and indeed this is the one grand object of the Patent Laws, coupled with the advantage of obtaining a good record of every new plan; it is, therefore, *self-evident* that (to use the words of the Commissioners) "a sufficient portion of the surplus now derived from the fees paid on Patents" should be devoted to providing the very best and most complete record of all inventions and processes known in the world, together with the most copious indices, catalogues, and references to the whole, with translations of foreign inventions and abridgments of all the most useful and important inventions, and good models of all machines in use, whether patented or not, in a museum under the same roof as the other Patent Offices; for it is only by having the books and the *models together* that reference can be conveniently made for the *descriptions of the models*.

I may perhaps mention that I found at the "Conservatoire des Arts et des Métiers," in Paris, a good model of the very earliest locomotive known; the engine itself, which I afterwards saw, was made by a man of the name of Nicholas Joseph Cugnot, born at Void, in Lorraine, on 26th February 1729, and died in Paris in 1804; the first engine was made in 1769 and a second in 1770. This man's invention has hitherto been overlooked in all histories of the locomotive engine, and had not the museum brought it to light, might never have been known.

The Commissioners of Patents having pointed out in detail some of the evils that existed both in the *Patent Office, Library, and Museum*, and after stating that the accumulated surplus income amounted at that time to 129,000*l.*, and that the annual surplus was estimated at 40,000*l.* for 1862, concluded their report in the following words:—

"The Commissioners of Patents, therefore, earnestly request that your Lordships will be pleased to sanction the appropriation of the site (Fife House, Whitehall, belonging to the Woods and Forests, the lease of which has just expired) proposed by them for the Patent Office buildings; that your Lordships will be pleased to give the necessary directions to Her Majesty's Board of Works to obtain the proposed site, either by purchase or by a lease from the Crown, and to direct the architects to prepare the necessary plans, elevations, and estimates; further that your Lordships will be pleased to direct such plans, elevations, and estimates to be laid before Parliament at the commencement of the ensuing session; and to apply for a vote for such proportion of the estimated cost of the buildings as may be required for the year 1863-4; and, should it be decided to purchase the land for the site, also to apply to Parliament for the sum of money necessary for that purpose, all such monies to be repaid out of the surplus income for the current and succeeding years."

The accumulated surplus fees now amount to the enormous sum of 240,000*l.*, and the surplus income for this year is estimated at 59,000*l.* more.

Now I will take the case of a person who thinks he has made an invention, but who wishes to satisfy himself as to its novelty; now there is no one *place* where he can ascertain this fact; he may search in books, but is very likely to miss the right one, even if he can command access to a good library, and the amount of time that would be consumed in examining book after book would be enormous; again, he may go to the Patent Office Free Library and examine

the Specifications of English Patents, which being to some extent arranged according to the *subject matter*, are *easier* to look through than most books, though *they* require to be much *divided* and *sub-divided* under different subjects and branches of subjects before they can be looked through with sufficient certainty or celerity; but after all this searching through 49,921 inventions (of which only 10,043 were still in force at the end of 1863) there still remains the large field of unpatented inventions, processes, and ordinary every day modes of working which are entirely unregistered, except so far as they are described in books on trades and manufactures.

Now I would suggest that, in addition to the Indices of Specifications, there should be prepared in like manner every year General Indices of *all inventions*, processes, and modes of working *known at the time*, including, of course, the Specifications in these, so that so far as possible these General Indices should fully inform the person inquiring *where he would find*, first, the general subject he wanted; secondly, the references to the particular branch of that subject; and thirdly all descriptions, models, and specifications of the details of the particular branch he was in search of. I will give an instance. Suppose the person thought he had invented some improvements in the detail of fermenting ale, he would look in the *Subject Matter* Index for "Brewing," and under this *head* would find perhaps *twenty branches*, such as Mash Tuns, Extracts of Hops, Cooling, Refrigerating, Crushing Malt, Brewing Coppers, Fermenting, &c., &c.; then under "Fermenting" he would find Reduction of Temperature "Squares," Rounds, Parachutes, Tuns, Cleansing Beer, &c., &c., and under Cleansing Beer he would find "Burton System," Improvements in ditto, and would find possibly in Model or Description the actual thing that would prevent a costly law-suit, besides the expense of a Patent and the waste of his own time.

Although it is now 12 years since the passing of the Patent Law Amendment Act, I may mention, as an example of the great need of a large increase of the staff of officers, that so important a subject as the classification of steam engines has never yet been completed, and masses of most valuable information are at present lying useless in the Offices for the same reason.

At present it is quite impossible to tell whether a French invention, for instance, one which has been patented in France some time before it has been patented in England, is a valid Patent in this country, because it might have been published in this country by a book with a description of the Invention having been imported, before the English Patent was granted; this evil ought to be cured by copies of the French specification being sent over here *at once*, and lodged in the Patent Office to be considered as an official publication and vice versâ, and the same with America.

I would also suggest that, as far as possible, the descriptions of all known processes should be collected by direct application to the Manufactures (as is now so often done when a person is going to write a book on manufactures, such, for instance, as Tomlinson's Cyclopædia) and by allowing any manufacturer, on payment of a small fee, to send in a description of any mode of working that he wished to be left at full liberty to continue to follow, so that it should simply be recorded and printed as an official publication, without giving the manufacturer any rights whatever, but absolutely preventing anyone else afterwards taking a Patent for the plan. Of course it would be necessary to properly examine these descriptions of inventions or plans to see that they were really worth recording, but there is no doubt but that a very large number of inventions would thus be drawn forth and become of great general use which would otherwise probably never be known. As one example I will name the Suspension wheel, which had been made and used on a hand-truck (and thus become known to a few people) a long time before the patentee took out a Patent

for it; in this case a most useful invention lay idle for a long time simply because the plan was not published.

I may mention as an example of the great need there is for "proper buildings for an Office or Offices" for the purposes of the Act that there exists such a want of a comprehensive and intelligent arrangement of matters appertaining to Patents that:—

If it is necessary to refer to the original Specification of an old Patent, one has to go to the "Record Office," but it is of no use whatever there to give the name of the patentee, or the date, or the number of the Patent, as the only reply one can get there is the question as to "what roll it is in;" this of course naturally sends the applicant back to the Patent Office, and there perhaps he may learn from one of the officers (who are always most courteous, and do all in their power to assist the public) that they have no index to the Rolls at the "Record Office," but that he had better go to the old "Enrolment Office" up Chancery Lane and see the "Register" there, and this the applicant must do, and there he will find, on giving the name and date of the Patent, the number of the roll at the "Record Office" which ought to contain the Patent, and should the applicant be curious enough to ask why he should be thus driven about from office to office, he will be told with a smile that when the Act was passed enacting that all the old Rolls of Specifications should be lodged in the "Record Office," it said nothing about the "Registers," and so they are retained at the "Enrolment Office," and the officers at the "Record Office" will neither copy the "Registers" so as to be able to let a person see what he asks for, nor will they attach the proper number of the Patent (*i.e.*, the Patent Office number which appears on every copy that is sold) to the entry of the Patent in their Indices of Rolls, and the Patent Office has not officers enough to send to the "Enrolment Office" and copy the "Registers" there, nor to the "Record Office" to copy their Indices.

Supposing such improvements to be made, our manufacturers would be placed in the very vanguard of progress, in fact on the boundary line between old and new, or that which was already accomplished and that which yet remained in front tempting their advance and conquest.

It will be seen, I have assumed, that an inventor would himself not only wish to know whether his invention were new or old, but that if proper facilities were afforded him, as they ought to be, (seeing that the law assumes that he is acquainted with all previous inventions,) he would of himself take the trouble to examine as to its novelty before he incurred the expense of a Patent; but unfortunately it sometimes happens that inasmuch as a thorough search would cost much more than a Patent, a supposed inventor will not take the trouble to search, and in some cases would even rather shut his eyes to anything that came at all near his plan and was before him in date. Now I would propose that no such wilful blindness should be allowed to pass unchallenged, but that the public should be protected at the cost of the inventor or supposed inventor, by the appointment of examiners, who should examine every Specification to see first, by reference to the complete and perfect Indices I have before alluded to, whether the invention were new, and supposing it were found to be decidedly old, the so-called inventor's attention should be called to the reference, and if he still insisted on taking out a Patent, it should be endorsed with the reference to the old thing, and no printed copy should appear without such reference. Secondly, the examiners should peruse the Specification thoroughly to see if the object of the invention is clearly pointed out, the *advantages* to be obtained by it are stated fully, if the distinction between the *old* and *new* parts is drawn, the *principle* of action is mentioned, the *means* of carrying it out expressly specified, and the claims very positively put as to everything or every

combination claimed, so that no question hereafter shall arise in such Specification as to any "variegated combinations" (as they have sometimes been called). I would propose not to lower the cost of a Patent to the inventor, but to let the examiners be paid out of the present fees, which are more than ample for all the improvements that are required in reference to Patents.

I would further require the services of such examiners to assist in several other duties besides those of aiding in the preparation of the abridgments, abstracts, &c.

I would submit that as the business of the ordinary Courts of Law has so increased that it will probably be necessary to increase their number shortly, and as numerous objections are generally found to trying a Patent case when it is really ready for trial, it would be best at once to form a Patent Court for the exclusive trial of all matters appertaining to Patents. Indeed it has been found indispensable to form a Divorce Court for the trial of a special class of cases, and, again, it is found necessary to call in the assistance of the Elder Brethren of the Trinity House to give their judgment on a totally distinct class of cases, relating to shipping matters; and now there is no doubt but that great benefit would accrue from the appointment of Judges having a general technical knowledge of inventions and machinery generally, and conversant with the applied sciences; three such judges would constitute an excellent court of appeal or reference, and no appeal whatever to the House of Lords need then be resorted to. Indeed the endless appeals that it is now possible to keep up for a series of three, four, and five years renders it utterly impossible for a man of moderate means to defend his Patent, or defend himself if attacked vigorously by a rich patentee; indeed an occasional injustice, done to a patentee or an infringer (for want of a number of appeals) would be infinitely preferable to the present practice.

The examiners before named should always assist the Judge.

If the present system so long as prolongation of Patents is concerned be retained, I think the application should be made to the full Court of the Patent Office assisted by the examiners, but I am decidedly of opinion that it would be best to grant Patents for 21 years certain, subject to the present payment and to another payment of 100*l.* at the end of the fourteenth year, and also subject to a revised Specification being sent in at the end of the seventh and fourteenth years, giving all the latest improvements upon the invention, full details of the mode of working, amounting almost to working drawings and Specification.

This plan even would *not* bring up the average lifetime of a Patent to *seven years*, for at present the average duration of the protection is only three years and a third ($3\frac{1}{3}$ years), although every invention is described and the Specification registered for the benefit of the public, so that inventions may be said to be procured by the public very cheaply indeed, for in any case theirs is all gain, as no patentee can take away from the public anything that before belonged to them, *i.e.*, was publicly known.

It would hardly be supposed that the Patent Office is doing for *less work* now (with a larger income) than it was during the first five years when the arrears of old Specifications, amounting to 12,977 in number, were all printed, published, and indexed. To use the words of the Commissioner of Patents, "These *valuable works* have cost in transcribing, "printing, lithographic drawings, and paper upwards "of 90,000*l.*"

I believe this proceeding to have been one of the most important kind and of the *utmost advantage* to the *manufactures of this country*. There is no possible reason why a similar useful expenditure of the fees paid by patentees should not now be made for the benefit of the public manufacturers and inventors generally by full, complete, and early knowledge of

all known inventions, processes, and modes of working being published. To an inventor nothing can be more instructive or interesting than the history of inventions; indeed it is often as great a *stimulus to real invention* as the hope of future emolument, to be obtained only after all the drudgery and expense of practically applying an idea has been gone through.

I beg further to submit my answers to the questions put to me in order as numbered:—

No. 1. I think it is absolutely impolitic to *tax* an inventor or put any check on inventive talent, but at the same time I believe it to be absolutely necessary to have some kind of a standard (or sieve) to separate roughly frivolous applications for Patents from those made by persons who are really in earnest, and who *bonâ fide* intend to prosecute some useful idea to a practical result; but I consider that 21 years is quite as short a time as is necessary in very many cases for an inventor to bring his invention to perfection and then get it introduced, and after that to reap his reward; and, generally speaking, the grander the invention the longer it takes to bring it into practice and obtain remuneration. Even James Watt would never have realized any profit had he not had an extension of his Patent. I would propose that 100*l.* should be paid on the fourteenth year as well as the present fees at the third and seventh years, but there should be a revised Specification sent in at the seventh and fourteenth years. The present fees yield ample funds for all the purposes of the Patent Laws, Patent Court, Museum, Library, and Reading Room.

No. 2. I would on no account let any tribunal or examiners be final as to the refusing of a Patent, for it might well happen that some of the best inventions would be refused, for true inventors are necessarily in advance of their age and may therefore well understand some matters that the examiners would not. For instance, could anything be more likely than that an absolute tribunal would have refused a Patent to a man that proposed to drive a ship with a "smoke jack," and yet one of the first inventors of the screw-propeller was a "smoke-jack" maker, and did propose it; or, still later, if a person had proposed to blow water into a high-pressure boiler by a jet of steam from a boiler at a lower pressure, is it not likely that the tribunal might have refused him a Patent, and yet the plan is quite correct in practice, as is proved every day, and the matter can be perfectly explained to any one *fully aware* of the principles which govern the flow of elastic and non-elastic fluids. I do not think the present examination is sufficient, but would recommend the appointment of several examiners, as before stated, one to investigate (as far as the case appeared to require) the novelty of the invention, to call the attention of the inventor to the old matters if they touched his, and if he persisted in having a Patent notwithstanding the plan was old, his Patent should be *endorsed with reference* to the *old matter*, and no copy of the Patent should appear without such indorsement. Of course there should be an appeal to one of the three Judges of the Patent Court in case the patentee demurred to the decision of the examiner, or the appeal might be to three of the examiners.

No. 3. I consider the present system of opposition and caveats of but little avail, except in cases of fraud, or suspected fraud, as, for instance, when a workman engaged in experiments for his master, who is taking out a Patent, should apply for a Patent himself with the same title; I believe, therefore, that the safeguards of "opposition" must be retained, and that they should be private.

No. 4. I am clearly of opinion that no public inconvenience is caused by a *multiplicity* of Patents, for the more that good useful inventions are introduced so much the more does the public gain. It is a very popular error that is often repeated, though it is an entire fallacy, that people are *prevented* from doing matters by a Patent that they have hitherto been *free to do*. Now no Patent *can by possibility*

take away from the public right, though it may add to the public knowledge most materially, as well as add to the public advantage at once if the patentee intends to reap any benefit by his invention; but in any case the public have the full advantage of the new thing in 14 years entirely free. If our Courts were more strict in at once, without any remorse, declaring a Patent bad, if it in any way presumed to take away from the public that freedom of action or freedom in constructing a machine which had long been in possession of the public, we should hear less of "*obstructions*" caused by Patents. Unfortunately it sometimes happens, from the constant immunity which such patentees have enjoyed, that they take out Patents for the most ordinary every day arrangements, whether of form or even of position only, involving no invention whatever, and containing no new principle of action, result, or advantage. Again, sometimes when a slight improvement is made, it is in fact only a common every day *trade improvement*, involving no invention, and is not the fit *subject matter for a Patent*.

No. 5. I consider it would be very difficult for any one to say how small or trifling an article should be refused a Patent, but it would not be difficult for a person conversant with the particular trade or process to say whether there were any real invention, and if there were not, I would empower the three Judges of the Patent Court to *refuse* the Patent on *that ground*.

No. 6. Yes; by some kind of cheap *scire facias* before the Patent Court, first before one Judge and on appeal before the three, or on application by both sides before the three Judges at once, for a FINAL JUDGMENT, for it has been the total uncertainty and continued appeals that have done so much harm in Patent Law.

No. 7. Yes, most certainly, for when we find Patent cases, which are ready for trial (and for which a number of expensive witnesses have been brought up from the country), put off again and again, made remanets, and at last referred, so that several years elapse before a decision is obtained (and then not from the Court, but from an Arbitrator, who sits when it is convenient to him and to some half dozen other gentlemen), we see that the plaintiff and defendant are about equally inconvenienced, and *injured in their business arrangements* by the *delay, uncertainty*, and immense expense; so that in fact after some years, the award is chiefly looked for in reference to the costs. I would beg to propose that three Judges be appointed to preside in the Patent Court, and, as far as it could possibly be managed, they should be gentlemen well acquainted with the applied sciences, and having a natural perception of mechanical construction, and know something of chemistry and manufactures generally; they should be assisted on any or all occasions by the examiners, who would be scientific and practical men, thoroughly conversant with the laws of mechanics and chemistry, and manufactures in a general way, there being probably six examiners.

The examiners would also assist in any difficult case as to an abridgment or abstract, or the proper

development of information collected by the travelling assistants.

No. 8. No, it is *impossible* to manage another man's business for him, there must always be so many conditions; for instance, only to mention one, the solvency or *suspected* solvency of the demanding licensee *must* be allowed to influence the patentee; but *no one* is so much punished as the patentee himself, if he asks too much for the use of his invention, as he gets *nothing*, and has to pay the cost of the Patent besides, which in such case he generally drops at the end of the third year, or seventh year, when the 50*l.* and 100*l.* fees become due. It would probably be well to *encourage a patentee* to value his price in his Patent, and it would be found very materially to tend to the use of his invention; he might alter it afterwards. One thing a patentee should certainly be *made to do*, and that is, to always *keep* at the Patent Office his *exact address*, so that any one may *find him* at any time, or communicate with him; for many inventions are practically shut up for want of the proper address of the inventor at the Patent Office.

No. 9. I think all Foreign inventions ought to be published here as soon as they are published abroad, simply allowing *the few days* required for bringing over the information and publishing it. I would print the letter-press *at once*, and the drawings as soon as they could possibly be engraved, for all such inventions *so imported* would be clearly *given* to the public free, without even any small profit to the *Inventor*, *provided* he had not already secured a Patent here. I would allow a person abroad who was the real *inventor* to take a Patent here if his authorized agent lived in this country, was named in the Patent, and had full *authority* to sell or grant licences to any one without waiting for instructions from abroad, for nothing is more destructive to business than an absence of the principals and delay in correspondence. I would not allow a mere importer who had no right over the invention to patent it here, and now that communication is so very quick and certain even with America, the *immediate* publication here (as proposed above), would nearly stop all clandestine importations, as the real inventor would himself secure the invention *BEFOREHAND*, if he wished for a Patent here.

No. 10. Only to their agents here absolutely authorized.

No. 11. I strongly recommend a definite prolongation of the term of a Patent to 21 years, as before stated, thus saving the Privy Council all the trouble of applications for extensions.

No. 12. I think the law for Disclaimers good, if it be properly administered, and great care be taken by the *examiners* that Patents are not *extended* by Disclaimers artfully worded, as such may easily be the case, if the person examining is not intimate with the process or machinery described. At present I am of opinion that Disclaimers are admitted too easily, and often palpably for false reasons.

I have, &c.

E. A. COWPER.

MEMORIAL of the MANUFACTURERS, CHEMISTS, MEMBERS OF PARLIAMENT, and SCIENTIFIC MEN.

London, April 1864.

To the Right Honourable Sir John Romilly,
Master of the Rolls, and Permanent Commissioner of Patents.

SIR,

ON July 22, 1862, a memorial signed by many engineers, chemists, and other scientific men was, as is probably in your recollection, presented to you, with the hope that it would be taken into consideration by the Commissioners of Patents for the purpose of remedying the matters therein complained of. The prompt and courteous attention which that memorial met at the hands of the Commissioners has induced those whose names are attached hereto to venture to

trouble them anew on matters which now, in the opinion of your present memorialists, urgently require to be amended.

In 1862 two principal requests were made in the memorial, the one that an order which had been given for the discontinuance of the supply of scientific periodicals to the library of the Patent Office might be rescinded; and the other that better accommodation for the public attending that library might be afforded.

Your then memorialists had the satisfaction of finding that on both these instances the Commissioners were disposed to accede to their requests.

Although in the former memorial attention was

more immediately called to the threatened discontinuance of the purchase of *periodical* works, the memorialists had in view the proper maintenance of the library in a complete state; and they could have had no idea that the bare letter of an order given by the Commissioners would be obeyed, and the spirit of it be entirely neglected. But this appears now to have been the case, from the fact that scarcely a single volume of any scientific work has been added to the library during the past year, so that even in those instances where the first or early volumes are there, other volumes of the series which have since been published have not been purchased.

We now beg leave to call the Commissioners' attention to the recent reduction of the staff in the library, which staff, in its present disorganized state, is utterly inadequate to satisfy the requirements of those persons seeking for information among the very numerous works contained there, so that the usefulness of the library is being sacrificed to a large extent.

Your memorialists view with alarm and regret any reduction of the staff employed at the Patent Office, as they had entertained the hope that so far from a reduction being made, there would have been an increase ordered to such an extent as would have enabled the abridgments of the Specification in the various branches of art (which abridgments were commenced about seven years ago) to have been pushed vigorously forward, so as to complete the abstracting of the whole of the original Specification, and to keep up those abstracts from year to year as new matter is furnished.

Your memorialists feel it is hardly possible to overrate the advantages to be derived by the public from a complete and intelligent system of abstracts; and they venture to urge upon the consideration of the Commissioners the necessity of at once providing a sufficient number of qualified persons, to be under the entire control of the scientific officer appointed by the Commissioners to superintend the Specifications, to assist that officer in preparing such abstracts, and also to collect and epitomize scientific information generally.

In corroboration of our views of the great importance and utility of proper abstracts of Specification, and of the collection and publication of information obtained from other sources, we may mention we are informed that in the United States of America the Commissioner of Patents, in a work having the same object, makes an annual report to Congress of the whole of the Patents taken out during the year, giving the names and residences of the inventors, and a short description of each invention, stating the claims of the patentee. Combined with this is a voluminous report by the Commissioner, assisted by a competent staff of officers, on the yearly progress of arts, manufactures, and agriculture.

So important is this work considered in the United States, that although the finances of the country are under great pressure Congress continues to vote a sum for the publication and distribution of 200,000 copies of it annually.

We might have hesitated to urge our views upon the Commissioners had the carrying out of them involved any charge upon the ordinary revenue of the country; but the Patent Office is far more than self-supporting, as is clear from the fact that its surplus fund amounts to about 250,000*l.* sterling. Your memorialists therefore trust that a portion of this large sum and of the annual surplus income (between 40,000*l.* and 50,000*l.*) may be at once devoted to the object of building a complete Patent Office, and of maintaining the full efficiency of the same.

We think it unnecessary to trouble the Commissioners with any details in reference to the present utterly inefficient state of the Patent Offices, as that state was fully recognized by them in their report to the Treasury on 7th August 1862.

Praying that the Commissioners will take this matter into their serious and immediate consideration,
We have, &c.

[Signed by 99 engineers, manufacturers, chemists, members of Parliament, and scientific men.]

REPORT of the SUB-COMMITTEE appointed at a Meeting of the General Committee of the Manchester Patent Law Reform Association held at the Town Hall, January 31st, 1862, to consider the Resolutions proposed by a Committee of the British Association for the Reform of the Patent Laws, and to report to the General Committee on the Merits of such Resolutions, and also to suggest any other Alterations in the present Laws which the said Sub-Committee may consider necessary or desirable.

After examining carefully the said resolutions of the British Association, and also considering what defects in the working of the present law require amendment, the Sub-Committee have resolved to recommend to the consideration of the General Committee the following alterations, which they are of opinion will not interfere with the rights of Inventors, and at the same time by preventing a number of useless Patents being granted will be an additional security to the public

First.—That a Court of Commissioners or Examiners shall be appointed to consist of three members eminent for their scientific acquirements, one to be conversant with mechanical engineering, the second with chemistry, and the third a barrister or law officer with a sufficient staff of assistants, who shall devote the whole of their time to the Patent Office, and be paid liberal salaries out of the funds arising from the fees paid for Letters Patent.

Secondly.—That the said Commissioners shall grant provisional protection for Inventions on application as heretofore.

Thirdly.—That the Commissioners shall carefully examine each Invention so provisionally protected as to the novelty thereof.

Fourthly.—That the Commissioners shall, within two months from the date of the provisional protection, either authorize the grant of the Patent or inform the applicant that they have doubts about the novelty of the Invention, stating their reasons and referring him to the authorities they depend upon for

proving the want of novelty; or if necessary to require further particulars than are contained in the provisional specification, in such case the applicant shall furnish additional descriptions within one month after receiving such notice or abandon his right.

Fifthly.—That any person interested in opposing a grant of any Patent shall give notice of his objections to the Commissioners previous to the expiration of two months from the date of provisional protection.

Sixthly.—That the names of the applicants or Inventors shall not be disclosed to the Examiners.

Seventhly.—That when the Commissioners report against the novelty of any Invention the applicant shall have the privilege of asking for a re-examination, at which he shall produce either *vivâ voce* evidence before the Commissioners or give them additional particulars in writing.

Eighthly.—That the applicant shall pay reasonable fees for such a re-examination: the fees to be regulated by the Commissioners, but the scale to be higher for personal evidence than for written particulars or amended specifications.

Ninthly.—That all cases of infringement shall be tried in the first instance in any of the ordinary courts of law before a special jury of gentlemen conversant with the subject matter of dispute.

Tenthly.—That either party shall have the power of appealing against the decision of such jury to the Court of Examiners appointed to determine on the novelty of the Invention on application for the Patent, and that if this Court confirms the judgment already

given their decision shall be final, but if they differ an appeal to the Privy Council shall be allowed, but whose decision shall be final.

Eleventhly.—That if the Patentee shall find that he has claimed something in the provisional specification, which is not new or useful, he shall be allowed to disclaim the same in his final specification.

Twelfthly.—That a Patentee shall not be compelled to grant licences for the use of his Invention until after the expiration of five years from the date of his Patent.

Thirteenthly.—That the 50*l.* tax at the end of the third year be abolished, and 100*l.* be paid at the end of five years.

1. Should the cost of obtaining Letters Patent be diminished or increased, if either, to what extent, and should the payment be made in one sum or by annual or other instalments?

Cost as before in two payments only to be made within five years.

2. Does the present mode of obtaining Patents appear to you satisfactory?

Yes.

Is it your opinion that there ought to be a preliminary investigation of a more searching character than that which at present takes place? If so, how should the tribunal be constituted before which such investigation shall be conducted, and should the judgment of such tribunal be final?

No.

3. Should the investigation be *ex parte* or public, and subject to opposition? Should the present practice as to caveats be adhered to?

See No. 2. Yes.

4. Have you reason to suppose that public inconvenience is caused by the multiplicity of Patents?

Yes, but do not see how a better system than that suggested in first clause of Report could be devised.

5. Do you consider that Patents ought to be refused on the ground of the trifling and frivolous nature of the Inventions for which they are claimed?

No, but Inventions which have appeared in or have been suggested by public journals should not be entitled to Patent right.

6. Should greater facilities be provided for the repeal of invalid Patents?

Their renewal at the end of five years sufficient.

7. Do you consider that any change should be made in the tribunal appointed to try actions and suits instituted by Patentees?

Yes, at assizes before a jury of experts, with appeal to a Patent Court in London, consisting of five Commissioners, their decision to be final. (See Report.)

8. Should the granting of licences in your opinion be made compulsory, and can you suggest any practicable method by which this should be done?

Not compulsory.

9. Do you think it expedient that Patents should be granted to importers of foreign inventions?

No.

10. Do you think it expedient that Patents should be granted to foreigners residing abroad, or to their nominees?

Yes.

11. Is it expedient to make any, and if so, what alterations in the law relating to prolongations and confirmations?

See No. 1.

12. Is it expedient to make any, and if so, what alteration in the law respecting Disclaimers and Memoranda of Alterations.

Yes, power should be given to disclaim or alter at a fee, the original date of specification to be retained.

HUGH THOMAS,
Secretary,
Manchester Chamber of Commerce.

ANSWERS by HARRISON BLAIR, Esq.

To the early clause of the first Question propounded by the Commissioners, I reply that, in my judgment, no reasonable complaint can be preferred against the present cost of obtaining Letters Patent from the Crown.

The applicant for a Patent incurs an outlay on his application of 35*l.*, or thereabouts. This outlay carries him forward for a period of three years. The expense of this last-mentioned document will vary according to the nature of the invention. In some instances, a description of an intricate mechanical invention may require elaborate drawings, whereby the expense becomes augmented. In other cases, the complete specification is little more than that which is found in the first, or provisional specification.

I hold, however, that to cheapen Patents is neither desired by the general public, nor would it work beneficially for inventors. When a man obtains a Patent for an insignificant discovery or trifling improvement, he not unfrequently hinders others in the same walk, who could really produce something incomparably more valuable, but who find the comparatively valueless invention offering an obstacle. Then, again, he has the entire six months wherein more leisurely to review and determine the wisdom of his further continuance of the Patent.

If it be objected that the indigent man finds himself shut out from reaping the benefits of his inventive genius, I think an answer will be found in the fact that, if it (the thing to be patented) is clearly and conclusively worth something ultra the cost of the Patent, then persons will be found perfectly ready and willing to furnish the necessary means, and make some suitable arrangement with the Patentee; and if it be not reasonably certain that the Patent is worth more than its cost, then it is little better than *damnosa hereditas*, and other inventors ought to have the ghostly monopoly (obstructing the birth and

creation of something infinitely superior) at once removed.

To the latter portion of Question 1, I am of opinion that the periods fixed for payment of the duties of 50*l.* and 100*l.* respectively are fair and reasonable.

To multiply these payments is open to this peril—that a Patentee may, by accident, neglect to make one of the payments. The Patent thereby becomes invalid, and the only cure is by resorting to Parliament, of which I had an instance in the last Session; and, with much difficulty, obtained an Act at a cost of some 600*l.* Of course in this case, had the inventor been an indigent man, the Patent would not have been revived.

Whilst incidentally bringing under notice this late case of a Patent lost by an omission, your Committee may possibly think it worth while to consider whether, in the like case, or cases *ejusdem generis*, the Lord Chancellor, Lords Justices, or one of the Law Officers of the Crown might not very properly be clothed with power to remedy such omission hereafter, either on a short memorial or other inexpensive course of procedure.*

To the second Question of the Commissioners, I answer that, as a question of practice, the short petition and declaration now used by applicants seem to be an apt means as the first step for procuring a grant of Letters Patent.

To the very important question of a preliminary investigation, I respectfully submit that to the present system of indiscriminately granting all applications, very grave objections may be made and substantiated.

The daily practice of making applications for Patents is by resorting to a class known as Patent Agents.

The intended Patentee has to disclose so much of his invention as may enable the Patent Agent employed to draw a suitable title for the Patent, and

a comprehensive and partially explanatory statement of the alleged invention; and this valuable alteration in the law has effectually precluded a Patentee from practising the fraud of taking another's invention, which it was in his power to do ere he was under the requirement of lodging some description or account of the invention in the early stages of the application.

The Patent Agent thus instructed at once and immediately prepares these two indispensable documents; but he would deny that it in any way devolved upon him to counsel the applicant either on the novelty or the utility of the invention. Should the applicant determine to incur the expense of a general search of previous specifications, and so instruct the Patent Agent, then that search would be made with more or less diligence, and the result would be reported to the applicant; but the Patent Agent would not hold himself in any way liable for the shortcomings of his report, and such report must, under all circumstances (as appears to me), be altogether an insufficient assurance and guarantee to the applicant that his Patent when obtained would be free from impeachment on the score of novelty.

Many cases have come under my notice where these general searches have proved valueless, and your Committee may be of opinion that as Patents multiply the worth of such searches must necessarily diminish. The further or other opportunities an intended Patentee now has will be found in the deposit of the printed specifications at some of the Mechanics' Institutions and Free Libraries; but I think it cannot be contended that these last-mentioned opportunities have been found sufficient for the Patentee's protection.

I incline, then, very much to the opinion that a preliminary investigation would be a great boon to the inventors, and particularly to persons erroneously though steadfastly believing themselves to be original inventors, and also an indirect protection to the public. Nor can I see any insurmountable difficulty in constituting a Committee or Court of Preliminary Inquiry, but (for reasons to which I shall hereafter allude) it appears to me inexpedient that they by any judgment or decision should pronounce a Patent absolutely invulnerable.

Probably they might very conveniently determine the question of utility, and the further question of novelty, so far as regarded prior Patents which had been specified, or which had appeared in other printed publications; but the overwhelming difficulty appears as regards prior use of the alleged invention,—for it is manifestly futile to expect that the members of this tribunal or committee could possess amongst themselves such an untold amount of information as to enable them to declare that any invention, mechanical or chemical, or of any other description, had not been in some form of fashion previously known and used. But if these gentlemen are to be armed with the power to stamp an invention as immaculate, this injustice might, and in many instances would, arise—that one or more persons who had been actually using and exercising the alleged invention (it may be in secret, if you please) are pounced upon by the Patentee, and either stopped altogether or subjected to an impost in the shape of royalty; and it is an understood fact that many persons have such well-founded apprehensions of a litigation (the almost certain offspring of a Patent for a decided and indisputable improvement), that they apply themselves to work their discovery with closed doors,—indeed, many such cases have come under my individual ken,—and at this time I know instances where manufacturing chemists secretly, with two or three of their workpeople selected for the purpose, mix or make their chemical products, and actually themselves take part in the work, rather than divulge so much of the process as must of necessity be disclosed on any specification satisfying the requirements of the Law. They say, and with considerable force, that if you take a Patent for something that is utterly valueless, you will be left to the undisturbed enjoyment of it;

but that if a marked improvement is attained by your invention, there will be a combination or confederacy, by fair means or foul, to deprive you of the legitimate gains of your discovery.

Such a preliminary tribunal might, as I think, be advantageously constituted of three well-selected gentlemen,—a skilled and practical mechanic; a scientific, well-read chemist; and a legal man, conversant with Patent Law. If, on an examination of any particular application, the tribunal should find themselves in perplexity and doubt, they should be clothed with power to resort to some other person for his aid, opinion, and advice, and the applicant should be required to pay the expense occasioned by this extra-judicial opinion.

To Question 3, I reply that the investigation should be *ex-parte*, and the public should have the power they now enjoy to oppose, if so minded; nor do I think caveats are an objectionable mode of opposing.

Ignorant of what is meant by "public inconvenience," I can give no reply to Question 4; but it may be observed, that many people look upon all Patents as a "public inconvenience."

Question 5 invites the further question—Who is to be judge of whether the invention proposed to be patented is trifling and frivolous?

The applicant does not look upon the invention as trifling and frivolous, but of more or less importance,—else he would not go for the Patent. I recollect two cases, one of which was an instance of a gentleman taking a Patent for a self-adjusting wicket, used in the game of cricket, the wicket being fastened by a short elastic band fore and aft, so that when the ball struck the wicket, the blow was indicated by the oscillation, and the apparatus quickly and immediately afterwards adjusted itself; and the other was the case of a man taking a Patent for an improved mode of walking, which consisted simply of a spring introduced in the boot-heel. It is to be assumed, however, that neither of these applicants considered his discovery as trifling and frivolous.

To Question 6, I think the repeal of a Patent once granted by the Crown (more particularly if your proceedings result in the appointment of a preliminary investigation) should not be a light matter. I have known a Patent repealed under the present practice at an expense of about 90*l*.

To Question 7, I reply that the present mode of trying Patent rights before a jury is highly objectionable, speaking from experience. I have no hesitation in declaring that I have been concerned in several cases where it has been painfully manifest that the jury neither did, nor could, follow the evidence, and knew little more of the case when sent to them for their consideration than when they were sworn. I hold a very strong opinion that a court should be constituted for the trial of Patent causes and the repeal of Patents, with the right, it may be, for either party to ask for a jury; and I incline to think that where a jury is empanelled, the only issues submitted to them should be whether the Patentee was the inventor, and whether the invention was new. The question of infringement is, indeed, frequently a question more for the judge than for the jury.

I well remember a case where the jury, by their verdict, pronounced a helical coil and three annular springs to be the same thing. The defendants were too poor to carry the case further, and there the matter rested. In a recent Lancashire case, in the Queen's Bench, the witnesses and attorneys travelled to London five or six times, and returned at last untried, the Lord Chief Justice declining to try the cause. I am, therefore, strongly impressed with the urgent necessity for a distinct Court; and I believe the great majority of inventors will be thankful to witness a change.

My reply to Question 8 is, that I do not see why a Patentee should not have the right to place his own price on his invention, as the trader has on his merchandise. If he puts an excessive value on the invention, he himself smarts for it in two ways:—first, he does not receive the benefit of the invention

to the extent he otherwise might have done; and, next, he jeopardizes his chance of obtaining an extension. Should the Committee incline to the contrary opinion, they may perhaps consider that the Patentee shall determine the rate of royalty for a third or half the period granted by the Patent, and thereafter the rate might be arbitrarily fixed for him. If such an alteration be made, then the licencees from the Patentee, in the first instance, should thereafter be placed on the same footing. Again, your Committee will remember that it is no uncommon case to grant an exclusive licence to one firm or one individual, either for the whole country or for a prescribed district.

Questions 9 and 10 appear to be almost questions of political economy.

It is assumed, throughout this series of inquiries, that the protection afforded to an inventor by the law of Patents is consistent with a wise public policy, that the monopoly granted for a time to the individual is ultimately beneficial to the nation at large, by stimulating faculties of invention which would otherwise remain dormant, and by obtaining such a registration and exact description of each single patented invention as may preclude the possibility of its lapsing into oblivion. I shall take for granted the recognition of the desirableness of such a law, and the validity of the reasons upon which it is founded.

It remains to be considered whether it is desirable to extend to foreigners that protection which is accorded to a British subject, or whether the latter, having by communication or personal observation become acquainted with an invention not previously used in this country, has a reasonable claim to a temporary monopoly of the profits of an invention which he did not discover through the exercise of his own personal ingenuity.

To come to a conclusion upon these questions, we must examine whether the reasons upon and on account of which protection is granted to the native, hold good in the case of the foreigner, and to what extent. Beyond a doubt, the stimulus to invention, in so far as it is artificial and legal, is determined mainly by its commercial advantages; so that, at the first view, it is evident that the ingenuity of the foreigner is open to the same motives and, *ceteris paribus*, in the same degree as the indigenous inventor. The registration of foreign Patents would, either in the existing state of the law or in the case that the foreigner could here obtain the exclusive use of his own invention and the advantages therefrom ensuing, be alike secured.

We are, then, left to the question as to whether it is a wise principle of legislation to decrease the advantages accruing to a foreign inventor, to protect a second-hand recipient of any particular improvement. In point of fact, under the present state of the law, we, as far as lies in our power, do positively discourage the exercise of ingenuity in foreign parts. We not only do not accord to the real inventor those advantages which he might share with other producers of the same commodities in the absence of any patent privileges, but we exclude entirely his inventions, and their products or manufactures, by the granting of a fourteen years' monopoly to a person who may have filched it from him.

The reasons which determined the granting of Patent rights to communicated inventions appear to me to be twofold. Firstly, there is an intention to give the citizen an advantage over the foreigner; and, secondly, to reward him for the trouble and research expended in gaining a knowledge of the invention in question.

I wish it to be distinctly understood that my subsequent remarks do not apply to those cases in which a voluntary communication has been made, whether for a valid consideration or not, because the foreigner has thereby, of his own free will, debarred himself from the use and sale of his own inventions and commodities at his own proper risk, and probably at his own price.

The instances to which the remarks immediately

following are revelant, are those in which the discovery by a native is due to his own travel and observation, which are considered by the law as deserving the same reward as if they had been the "fruits of his own original genius." (*Black. ii. 25.*)

According to Blackstone, the title of "invention" implies some exertion of ingenuity, and some difficulty surmounted. That such difficulties have in the case before us been enormously diminished of late years is beyond a doubt. The voyage, which formerly occupied months, is now performed in days. The rapid means of communication by rail and telegraph place the different countries of the civilized world in the same relation to one another which was formerly held by different provinces or counties in the same realm. The same circumstances which have induced facilities of communication have oiled the wheels of traffic. It is as much easier to convey goods as passengers and information, so that the invention of the foreigner is known to us with comparatively little exertion or ingenuity, and the conveyance of his products is hastened, extended, and facilitated. The obvious conclusion from these facts is, that in the present state of the law we are rewarding our fellow-citizen in at least as great degree as before for a much less expenditure of labour, while we are excluding the stranger from advantages which the difficulties and dangers of carriage did not permit to him in former years. Mechanical invention has opened to him fresh markets, from which by legislative enactments we exclude him. Suppose, as an extreme case, that we enabled him to patent an invention which would put it in his power to outstrip British competition, and that an important branch of industry might be thereby paralyzed. The consequences in such a case would be precisely the same as when such an improvement is patented by a native. Export duties levied in his own country might raise the price of the foreigner's commodity, or practically prohibit it; but as soon as the remunerative prices attained the level at which it could be profitably manufactured at home, capital would be re-diverted into the old channel, and we should produce just as much as we want. Suppose that no such legislative checks were imposed on exportation, we should have the advantage of purchasing in a cheaper market, and our capital and labour thereby set free would be employed in other more remunerative undertakings. In a word, it appears to me that the granting of Patents to foreigners is a corollary from the doctrines of free trade.

The practical difficulty that prior user or invention could only with difficulty be proved by his competitors abroad is not very serious. If it be worth his while to patent an invention, it is worth their while to resist his application for such protection. Neither need we apprehend any serious obstacle in the way of giving publicity to such applications. It would be most palpably contrary to the interest of any Government to put a check upon its home production. At any rate, the Governments which might do so are not those under which invention is rife and commerce flourishing. The machinery for publicity is not difficult, and it would be in the interest of every State to promote it as far as possible. The communication of such a privilege, and an observation of its beneficial results, would probably go far to produce a reciprocity equally advantageous to all countries.

To Question 11, I reply that in the cases of prolongation and confirmation, which I have brought before the Judicial Committee, I have been duly impressed with the keen intelligence and zealous spirit with which their Lordships have scrutinized the evidence, and placed themselves in *loco parentis* of the public.

These applications are very expensive, and if the cost could be reduced the Patentees would be much benefited. Whether the service upon others of a copy of the petition, where there has been litigation, could not be dispensed with, and a notice substituted, may be entitled to your consideration. The adver-

tisements in the London papers might be well abandoned, and a notice be posted in the Great Seal Patent Office in lieu of such advertisements.

To the last of your Questions, No. 12, I have no suggestion to make. If the Patentee claims more than his own, the excess properly vitiates the Patent; and as any alteration he makes must neither widen nor change his monopoly, the public seem to me to be amply protected.

The recent case of "*Ralston v. Smith*" is an apt illustration of the consequences to a Patentee who, finding his original invention to be untenable, shifts his ground, and vainly essays to make his Patent cover something else than the discovery in respect of which he first applied to the Crown and procured his grant. The well-spoken words of the Court of Common Pleas point out that the law will not permit a

Patentee to alter his specification so as to change an impracticable generality into a grant for a specific process. It may, perhaps, be well to enable a Patentee to abandon part of what he has taken by his provisional protection when he comes to his complete specification—his right to do that, as the law now stands, being questionable.

An apology is due to the Committee for the length of these remarks, many of which may be considered irrelevant. When I commenced them, it was my purpose to reply to the questions laconically. As I proceeded, I found that bare answers would appear given thoughtlessly, and that explanation was necessary. To save your time, however, I have directed them to be printed.

HARRISON BLAIR.

Manchester, February 1863.

REPORT of the PATENT LAW COMMITTEE appointed by the COUNCIL of the BIRMINGHAM CHAMBER OF COMMERCE, in consequence of a Commission having been issued by the Crown to "Inquire into the working of the Law with regard to Letters Patent for Inventions."

Since their appointment your committee have had four meetings and given the subject careful consideration.

Having no knowledge of the course likely to be pursued by the Commission your committee prepared a series of questions to be submitted to the members of the Chamber and others likely to give useful information, among them to Mr. George Jabet, Mr. William Morgan, and Mr. Frederick Wills, solicitors; Mr. G. Shaw, Mr. E. J. Payne, and Mr. J. C. Cockings, Patent Agents. Three hundred and twenty-nine copies of these questions have been distributed, and thirty answers received. The number of replies, though small compared with the number of questions distributed, is, your committee believe, in excess of the replies received to any other questions issued by the Council, and it is hoped that this fact may be viewed as evincing a growing interest on the part of the subscribers in the proceedings of the Chamber.

After the issue of the questions prepared by your committee, a series of questions was received from the Patent Law Commissioners. These, for the most part, correspond with those prepared by your committee, and include only one or two others, of comparatively trifling importance.

Appended to this Report is a digest of the opinions contained in twenty-nine of the replies above alluded to, the remaining one, that of Mr. Jabet, is given in full, it being considered by your committee that the very valuable suggestions contained in it will be better conveyed in Mr. Jabet's own words than in any condensation of them that would be drawn up.

The views of your committee are as follows:—

OPINIONS of the PATENT LAW COMMITTEE appointed by the COUNCIL of the BIRMINGHAM CHAMBER of COMMERCE on the Questions issued by the Patent Law Commissioners.

1. Should the cost of obtaining Letters Patent be diminished or increased, if either, to what extent, and should the payment be made in one sum, or by annual or other instalments?

Your committee are of opinion that the present fees are not so high as to prevent useful inventions from being patented. They are also unanimously in favour of the retention of the first fee at its present rate. But with reference to the second and third fees, your committee think that the question of a reduction thereof is worthy of consideration, on the ground that the total amount received in fees more than covers the expenses of the Patent Office.

2. Does the present mode of obtaining Patents appear to you satisfactory. Is it your opinion that there ought to be a preliminary investigation of a more searching character than that which at present takes place. If so, how should the tribunal be constituted before which such investigation should be conducted, and should the decision of such tribunal be final?

Your committee are of opinion that it would not be desirable to appoint a board by which preliminary investigations should be made prior to the granting of a Patent, because they think that it would be impossible for such a board satisfactorily to deal with the large number of applications that would be annually brought before it. Should, however, such a tribunal be established, your committee are strongly and unanimously of opinion that it ought to be empowered to decide only upon the novelty, and not upon the importance of an invention.

3. Should the investigation be *ex parte* or public, and subject to opposition. Should the present practice as to caveats be adhered to?

Your committee understand that the present law of caveats is not in use.

4. Have you reason to suppose that public inconvenience is caused by the multiplicity of Patents?

No.

5. Do you consider that Patents ought to be refused on the ground of the trifling and frivolous nature of the inventions for which they are claimed?

No.

6. Should greater facilities be provided for the repeal of invalid Patents?

Yes.

7. Do you consider that any change should be made in the tribunal appointed to try actions and suits instituted by patentees?

Yes; and in making the change your committee think that the following objects should be kept in view:

1. A special tribunal to decide upon the validity of Patents.

2. Facilities for summary and inexpensive proceedings against infringers.

3. A simple procedure for annulling Patents.

Your committee would also suggest for consideration the following points, but without expressing any opinion on them:

1. County court jurisdiction in certain cases.

2. The judge to have power to call to his assistance three or more scientific men; and should a special tribunal be established, where the judge is assisted by scientific men, then that the judge should also have the power of calling a jury.

8. Should the granting of licences in your opinion be made compulsory, and can you suggest any practicable method by which this should be done?

No.

9. Do you think it expedient that Patents should be granted to importers of foreign inventions?

10. Do you think it expedient that Patents should be granted to foreigners residing abroad, or to their nominees?

Yes, to both these questions (Nos. 9 and 10), provided the article be manufactured in England.

11. Is it expedient to make any, and if so, what alterations in the law relating to prolongations and confirmations?

No.

12. Is it expedient to make any, and if so what alteration in the law respecting disclaimers and memoranda of alterations?

Your committee have no alterations to suggest.

Your committee desire also to express their opinion on the four following questions issued by the Council but not included in the list of the Commissioners' inquiries:—

1. Do you approve of the Patent Law as it now stands?

Your committee believe that notwithstanding the many suggestions that have been made for further improvements in the existing law, the general feeling is nevertheless that its working has been favourable to the interests both of inventors and of the public, especially when compared with the state of things under the previous law.

4. Should you prefer small annual payments as in France? Your committee are of opinion that sufficient grounds have not been shown for an alteration of the present plan.

5. Do you approve of working models being deposited (as in America) before the Patent is sealed?
No.

8. Should a patentee retain his exclusive right to his invention if he do not use the same?
No.

(Signed) G. DIXON.
E. PEYTON.
I. CHAMBERLAIN.
J. S. WRIGHT.

DIGEST.

1. Do you approve of the Patent Law as it now stands?

To this question there are 17 replies, of which six are in the affirmative, eight negative, and three undeclared.

The approvers have for the most part contented themselves with simply indicating their opinions in favour of the existing law. This in some cases is coupled with the reservation of objections to minor points, which are given more in detail in subsequent replies.

On the negative side the grounds of objections are that Patents are granted for trivial and improper objects, and the necessity of a special tribunal for dealing with infringements and disputed Patents.

2. If not, to what do you particularly object?

Seven replies, indicating various grounds of objection, of which the following are specimens:—

The fees; want of power to abolish invalid Patents; the necessity, in cases of infringement, of a more summary redress than the ordinary action at common law.

3. Do you find the fees too high?

To this question there are 24 replies, of which 13 are affirmative, 10 negative, and one undeclared.

On the affirmative side it is urged that,—

High fees are prejudicial to inventors.

The present fees are higher than most inventors can afford.

The fees are too high for inventions of small remunerative value.

The fees should be reduced to a sum sufficient to cover necessary expenses, and paid in one sum.

The preliminary cost at the outset should be made merely nominal.

On the negative side, that,—

The first cost is not too high, but the second and third payments should be reduced.

The present cost of obtaining Letters Patent is not an obstacle when the invention is really useful.

Patents are too cheaply obtained, and are used as means of advertising.

The present fees deter adventurers from taking Patents for schemes which are piracies on real inventions.

The changes made some years since have met the objection of high fees.

In connexion with replies to this question the following suggestions occur:—

Successful Patents worked to great profit might pay something extra for the monopoly.

Reduction of the first Government charges to a sum of 15*l.*, which should insure Patent protection for seven years, then on payment of 100*l.* the term to be extended over an additional period of seven years. Total cost of Patent for 14 years, 115*l.*

Extension of the present term of protection on which 25*l.* is paid from three to five years, substituting for the present payments of 50*l.* and 100*l.* an annual tax (say 5*l.*) or an annually increasing tax, as in Belgium, to be maintained for 14 years.

4. Should you prefer small annual payments, as in France?

The number of replies is 20, of which 10 are in the affirmative, nine negative, and one undeclared.

In the affirmative, the statements are,—

Annual payments would enable practical and generally poor men to incur the present risk and outlay.

(This reply, expressed in somewhat different terms, is given by several of the respondents.)

Annual payments, even if the sum total for the cost of a Patent remained the same as at present.

Annual payments for the first three or four years, till the Patent is established; the remainder in one sum if the Patent is continued.

Annual payment would be most advantageous to the patentee and to the public.

In the negative,—

Small annual payments would probably have the effect of leading patentees on when it would be better to abandon the Patent.

In one sense it would check parties taking out Patents for frivolous inventions.

5. Do you approve of working models being deposited (as in America) before the Patent is sealed?

To this question 21 replies have been made, of which 12 are affirmative and nine negative.

(To many of the replies in the affirmative reservations are appended.)

It is desirable to enter working models with the Specification for the sake of easy reference, not of tying the inventor to its particular form.

Working models to be deposited, but not made compulsory till the end of 12 months from the sealing of the Patent.

In the case of tools and machines, working models should be deposited to assist in defining the invention claimed.

Yes; but unless provision is made the inventor might be injured by not being allowed to deviate from his model.

Yes; if the model is not to be regarded as the ultimatum of the invention.

On the negative side it is said,—

Good drawings are sufficient for all useful purposes, and less expensive.

The deposit of models would cause unnecessary delay, and expose to greater risk of piracy.

Models should be permissive, not compulsory.

This is the only drawback on the American system, and it works better there than it would in this country, as in America application for the Patent is made only when the invention is completed.

6. Would it be an advantage to form a board which should have the power of refusing the application for a Patent on the ground (1) that a Patent had been previously granted for what was deemed a similar invention; (2) or on the ground that the invention, though new, was not of sufficient importance?

Total replies 27, of which 12 are affirmative, 11 negative, and four undeclared.

In the affirmative, the following statements are given,—

A board would be useful, but inventors should have a power of redress in the event of such board refusing a really new and valuable invention.

A local board of practical men, appointed by Government, with a paid commissioner at its head, would reduce the number of grants annually made.

Applicants (for Patents) should have a right of appeal to a jury.

A commission, composed partly of men acquainted with the Patent Law, partly of men of scientific acquirements.

A board, the powers of which should be limited to the inquiry into the novelty of the invention, but should not extend to its importance.

A board with power to refuse application for Patents interfering with everything in public use, or with Patents granted for seven years, or with existing Patents of any age.

In the negative,—

(1.) A preliminary investigation by any tribunal might subject an inventor to great injustice on account of the impracticable difficulty of constituting a proper tribunal.

(2.) Patents ought to be limited to substantially useful discoveries. Registration for short periods would afford sufficient return of profit for any invention of a "trifling or frivolous nature."

(Note.) More Patents are granted for "inchoate ideas," than for "inventions." This might be corrected by requiring an inventor to "define" his invention in a Specification to be filed on application for Letters Patent, as in France.

A registrar in the first place, with due publication of the Specification by advertisement, would be sufficient.

It would be impossible, from the number of Patents, for such a board in all cases to determine whether the invention was absolutely new.

A board would be open to charges of favouritism, the true remedy being found in increased facilities for searches, and more distinct specification.

A board would not be required if Patents were granted only for inventions involving new principles.

A satisfactory tribunal (for this purpose) could not be established.

The inventors, or at any rate the public, are the best judges on these points.

The experience of many countries shows that such a board works badly.

7. Should the granting of licences be compulsory?

To this question there are 26 replies, of which six are in the affirmative, 15 negative, and five undeclared.

The replies in the affirmative are unaccompanied by statements.

In the negative the following statements are made,—

It might be expedient to provide that the invention should be practised within a given period, or the Patent become invalid. The interests of parties will regulate the granting of licences.

We do not see on what grounds licences should be compulsory, or what tribunal could be established to determine the rate of licence.

It is a question of price, which cannot be assessed by act, and must, therefore, be assessed by a jury, which would be objectionable.

Because it would enable manufacturers, whose business was threatened by a new invention, to demand a licence to manufacture the article improperly, to the prejudice of the inventor.

Because the value of a Patent is frequently indirect, and consists in the advantages it gives the inventor in working his trade.

Because it would imply an *ad valorem* royalty, and who is to fix it?

The licence should not be compulsory, except to *bond fide* manufacturers, in the particular trade to which the Patent belongs.

If a Patent is admitted to be property, you cannot justly compel an inventor to licence its use to another.

8. Should a patentee retain his exclusive right to his invention if he do not use the same?

To this question there are 21 replies; six in the affirmative, 14 negative, and one undeclared.

In the affirmative the following are the statements made,—

Yes; because a Patent, though not actually used, is often necessary to cover a previous Patent.

Yes; because it is not the fault of the patentee that the public do not appreciate his invention, which it sometimes takes 10 years to do.

If the conditions of payment are complied with, the continuing of the Patent should rest with the inventor.

A patentee has unquestionable right to his Patent, as to any other property, whether he uses it or not.

The negative comprises the following statements,—

If a patentee does not use an invention, he ought not to debar others from so doing; but it would be very difficult to make a satisfactory law on the subject.

A Patent should be void in 12 months from the sealing, if not worked, or at any subsequent period if in abeyance for six months.

The Patent should be forfeited, if not in public use, within three years.

Not after a time, say five years.

9. Can you suggest any improvement in the mode of dealing with infringements and disputed Patents; or in the constitution of the courts and juries before which cases of infringement are tried?

The total replies are 24, of which 20 are in the affirmative, three in the negative, and one undeclared.

In connexion with the affirmative of the question, the following statements are given:—

First. As to constitution, &c. of tribunal:

The changes required in the existing law on this subject, are,—

The recognition of the absolute right of the inventor to his Patent; summary remedy against infringements; and a simple procedure for the annulling of Patents.

A board composed of practical men.

Questions of science should be referred to a board specially constituted; questions of novelty or infringement to a common jury.

A commercial tribunal.

A scientific board of three or five persons; empowered to hear evidence, examine witnesses' models and drawings, and to assess damages. Its decision to be final.

Local reference in cases of inventions of small remuneration, with right of appeal to the supreme courts.

The present processes should be made simpler in the first instance, and less expensive.

The present system is decidedly unsatisfactory. A court possessing more special information would be desirable.

Second. As to composition, &c. of juries:

Ordinary juries are incompetent.

Exports should form a part of the jury or tribunal.

Juries should be retained, but selected.

In the negative,—

No change in the tribunal is necessary; but it is desirable that considerable alterations in the *practice* should take place. The process by *scire facias* is nearly ruinous to a plaintiff by its expense.

It would be impossible for a board to work unless coupled with the further alteration in the law, that an invention or discovery not publicly used or patented within nine years immediately preceding an application for a new Patent, should be the subject of such new Patent.

10. Have you reason to suppose that public inconvenience is caused by the multiplicity of Patents?

Total replies 12, of which four are affirmative, seven negative, and one neutral.

In the affirmative the statements are,—

More care is necessary that one Patent, which is a close approach to the other, should not be granted.

Yes; a trifling alteration ought not to justify a new Patent being granted.

Yes; they often operate as inconveniences to trade.

In the negative,—

Inconvenience is more likely to accrue to inventors than to the public.

Foolish Patents injure those only who take them out.

No, for Patents are novelties introducing conveniences for the public advantage.

No inconvenience would result from the mere multiplicity of Patents with clearly defined titles, and rights strictly limited to what the titles embrace.

The inconvenience is not from the mere number of titles, but from maintaining old and useless Patents; the remedy being the repeal of patents unworked for two or three years.

11. Do you think it expedient that Patents should be granted to importers of foreign inventions?

Total replies 12, of which seven are affirmative, four negative, and one undeclared.

The statements in connexion with the affirmative are,—

Yes; if the article is manufactured under a Patent abroad.

Yes; for Patents so granted and now worked in this country are to us a source of national wealth, as they also reward the inventor.

Importers benefit the country as much as inventors, in consequence of the many valuable inventions brought into and worked by them in this country.

In the negative,—

Importers, not being inventors, should not be entitled to a Patent.

Not to importers. The French law, which requires the invention to be carried out, and the articles made in the country, is, on this point, preferable to our English law.

Not unless the invention has been communicated to the importer for that purpose.

No. There is no merit in mere importation of another person's invention; the importer has no property therein, and, therefore, deserves no privilege.

12. Do you think it expedient that Patents should be granted to foreigners residing abroad, or to their nominees?

Total number of replies 11, of which eight are affirmative and three negative.

In the affirmative the statements are,—

Yes; especially as Patents are granted to Englishmen in many foreign countries.

To encourage foreigners to bring their inventions to us. Foreigners compelled by themselves or agents to manufacture the articles, ought not to be deprived of the power to take out Patents.

On condition that there should be a nominee or agent in England.

Yes; it matters not where the inventor resides, if the subject of his Patent be worked in England, and benefit us.

Yes, upon condition that the foreigner puts the invention into operation in this country, and does not import articles made abroad according to the invention.

Yes. Any invention by which public benefit would accrue ought to be protected, irrespective of nationality.

In the negative,—

No; unless compelled to grant licences to English manufacturers.

No, for the patentees would be beyond the jurisdiction of this country.

13. Is it expedient to make any, and if so what alterations in the law relating to prolongations and confirmations?

Total number of replies 11, of which seven are affirmative, two negative, and two undeclared.

In connexion with the affirmative the following statements are made,—

The abolition of prolongations; and as to confirmations, a tribunal without appeal.

A fixed limit of a term of fourteen years for Patents would leave patentees little to complain of. At present, however, many patentees who have amassed large sums of money by their monopoly seek to renew it to the injury of the public.

A simple and less expensive method of obtaining prolongations.

Except in very extreme cases no Patent should be prolonged beyond the term of 14 years.

In many cases great injustice is done by the prolongation and confirmation of Patents. The decision in questions under these heads should be referred to a board of three or five standing commissioners, or to the Lord Chancellor's confirmation, on the recommendation of such board.

If a board of examiners were appointed to inquire into the validity of a claim before a Patent was granted, the question as to confirmations would be virtually decided.

No statements are given in support or explanation of the negative.

14. Is it expedient to make any, and if so what alterations in the law respecting disclaimers and memoranda of alterations?

Total replies nine, of which three are affirmative, four negative, and two undeclared.

In connexion with the affirmative the following statements are made,—

Yes; the provisions of the law extend only to the final Specification. A patentee should be able to disclaim, and alter his Provisional Specification.

A Patent should lapse on the patentee finding that he had claimed too much, with power to take out a fresh Patent at reduced fees. This would be preferable to the present system of disclaimers and alterations.

If either are allowed, the time should be as limited as possible after taking out the Patent.

In the negative,—

No; the present mode does not work badly.

No; it is very dangerous to permit inventors (under colour of "disclaimer," or of memoranda of "alterations,") to mend a bad Patent, or to "effect" a grant for an invalid one by that process.

15. Should the present practice as to caveats be adhered to?

Three replies; one affirmative, one negative, and one undeclared.

(No statements are appended to the simple affirmation or negation.)

REPLIES of MR. GEORGE JABET to the Committee on the Patent Law. (Commissioners' Series of Questions.)

1. Should the cost of obtaining Letters Patent be diminished or increased; if either, to what extent; and should the payment be made in one sum or by annual or other instalments?

I see no occasion to diminish or increase the cost.

The present mode of paying the fees appears to me sufficiently fair and reasonable. General laws cannot be made to accommodate special cases. The attempt to do so is the bane of modern legislation; and half the bad laws

spring from a consideration of hard special cases. All general laws, whether of God or man, must occasionally work special evil, and it is impossible, and therefore folly, to try to prevent it.

2. (1.) Does the present mode of obtaining Patents appear to you satisfactory? (2.) Is it your opinion that there ought to be a preliminary investigation of a more searching character, than that which at present takes place? If so, how should the tribunal be constituted, before which such investigation shall be conducted, and should the judgment of such tribunal be final?

(1.) Yes. I do not think it much matters how they are obtained. (2.) Certainly not. No decision of any tribunal on the merits of an untried Patent could be satisfactory. It would put its imprimatur on ingenious but useless inventions, sanction absurdities, and condemn valuable inventions. The only satisfactory tribunal is the public reception of the Patent after publication.

3. Should the investigation be *ex parte*, or public, and subject to opposition? (See above, No. 2.) Should the present practice as to caveats be adhered to?

A caveat, I think, is only taken out by a patentee fearing interference with his Patent, and is just and useful. The hearing of the parties on the caveat I would remit to the tribunal proposed under the head of No. 7.

4. Have you reason to suppose that public inconvenience is caused by the multiplicity of Patents?

I dare say it sometimes is; but on the whole, and far exceeding any occasional inconvenience, the public is benefited by the facilities for obtaining, and consequent multiplicity of patents.

5. Do you consider that Patents ought to be refused on the ground of the trifling and frivolous nature of the inventions for which they are claimed?

Certainly not. Let the patentee who takes out trifling and frivolous Patents suffer. It is his loss, if he incurs expense in bringing out a useless and frivolous, and therefore nonpaying article. I consider an article which pays, however trifling and frivolous it may appear, is useful to the public, or the public would not buy it, and is entitled to a Patent if new.

6. Should greater facilities be provided for the repeal of invalid Patents?

The only object of this would be to prevent the expensive litigation attending the contest of a Patent; but, unless some tribunal different from the present trial at *nisi prius* is adopted, I do not see that anything would be gained. If the validity of a Patent is to be tried by the existing tribunals, it would not differ from the present mode of contesting a Patent. I think, however, such a tribunal might be advantageously constituted, and to such tribunal any party, showing that he was aggrieved, might apply for the repeal of a Patent on the ground of invalidity.

7. Do you consider that any change should be made in the tribunal appointed to try actions and suits instituted by patentees?

Yes.

The multiplication of tribunals is an evil; but considering that a very absurd Act of last Session appointed a judge with nothing to do, under the Registration of Titles Act, he might perhaps be usefully employed by sitting as a Judge of Patents. I certainly think that a change is desirable. At present, to such a length do Patent trials often run, the public is much inconvenienced, justice hurriedly slurred over to get through the assizes, or causes left untried, because a "heavy Patent case" is down for trial. Moreover, judge, counsel, and jury are frequently all alike incompetent to deal with the scientific questions which arise; and scientific men, relying on their ignorance, are very careless, to say the least of it, as to their evidence. It is notorious that half a dozen scientific men, can always be found to swear against half a dozen other scientific men. This would not be the case if the forum before which they appeared was competent to deal with the subject. Counsel do not try to bamboozle the judges with bad law. The Judge of Patents should have power to decide questions of law and fact without a jury; but the litigant parties should be entitled to have a jury, and the judge should have power to summon a jury, whether the parties wished it or not, or to nominate three or more scientific men to sit with and advise him; in the latter case he alone to give judgment.

8. Should the granting of licences, in your opinion, be made compulsory, and can you suggest any practicable method by which this should be done?

No. The principle of granting Patents is by these questions apparently admitted. That being so, I do not see what right you have to restrict the patentee in the working

of his Patent. The idea of compulsory licences originates, I believe, in the insane attempt to cure certain alleged hard cases. Besides, I consider it would be quite impracticable, unless you return to very barbarous legislation, and affix the terms on which the licences shall be granted. Unless this is done, the patentee has only to affix a high and prohibitory royalty and set the compulsory licence at defiance. It would be like the dog-show regulation that every exhibitor shall sell his dog at the price affixed.

9. Do you think it expedient that Patents should be granted to importers of foreign inventions?

Certainly; yes. As at present.

10. Do you think it expedient that Patents should be granted to foreigners residing abroad, or to their nominees?

I think yes, in principle, but there would be difficulties in practice which would probably render it impossible. How are you to get security for the costs of contesting such Patents. I consider, however, such Patent should be liable to the same conditions as a Patent granted to a native, viz., that it is the patentee's own invention, and new.

11. Is it expedient to make any, and if so what alterations in the law relating to prolongations and confirmations.

I have no alterations to suggest, except in the tribunals for granting them, which should be undertaken by the "Judge of Patents" (No. 7).

12. Is it expedient to make any, and if so what alteration in the law respecting disclaimers and memoranda of alterations?

I am not sufficiently acquainted with the practice of disclaimers and alterations to answer this question satisfactorily, but I think no disclaimer or alteration should be allowed which materially affects the Patent, but the patentee should be allowed to petition the "Judge of Patents" for a repeal of his Patent, and to take out a new one.

There is another question, and, I think, an important one viz., whether a patentee should be allowed to let his patent lie dormant, not giving the public the benefit of it—the very ground on which the Patent was granted—but holding it *in terrorem* over other inventors. After the expiration of, say 12 months, a patentee, not giving the public the benefit of his invention, should be liable to be called upon to show cause before the "Judge of Patents" why his Patent should not be repealed; and unless he could show that he was taking active measures to bring it into operation it should be repealed; so, when a Patent had ceased to be used, it should in like manner be liable to be repealed.

In addition to the replies to the series of Questions issued by direction of the Council, three General Communications on the Patent Law have been forwarded to the Committee.

In the first objections are urged to the present state of the law relating to Patents, on the ground, 1st, of the minute particulars required in Provisional Specifications. 2nd, because Patents are too easily obtained. 3rd, because the inventor pays for a protection which he does not get, except at the risk of legal processes, entailing on him further and often ruinous expenses. The remedy suggested is, a board apart from the ordinary courts of justice, which shall decide all questions relating to Patents.

The second communication takes objection to the constitution of the commission for granting provisional protection, to its being composed of the law officers of the Crown, and suggests the substitution for them of a board of three or five permanent and paid commissioners, in whom shall be vested the power of granting Patents and generally of administering the law relating to Patents.

The third communication refers specially to the subject of "unused" Patents and the abuses resulting from them. The writer observes:—

"I am for the most part content with the present Patent Law, and the only suggestion which I think it necessary to throw out is one that arises out of the sixth question, and applies to persons who have obtained Patents but who do not use them. In such cases I am in favour of the repeal not only of invalid but also of obsolete Patents. The sixth question does not touch the latter class in distinct terms, but I hope the attention of the commissioners will be directed to them. I attach importance to this, because I am aware of the existence of a dishonourable practice of buying up *unused* Patents with a view to the greater protection of some analogous invention, and also with the design of combining portions of old inventions with something new which the inventor would not consider of sufficient merit to be patented for its own sake. I therefore, in order to repress these practices, advocate the repeal of every Patent which is not used within a reasonable time after it has been granted. I do not suppose the practices I have mentioned prevail very extensively, but I know of instances where great oppression of rival manufacturers have been attempted under cover of them. The operation is this:—a man having a Patent brings out an article widely different from his Specification, and then sues some one else for infringement, bringing to his aid on the trial an obsolete Patent which is supposed to bear upon it. This is a course of proceeding that I think your chamber would by all means wish to discourage, and I shall be glad if my hint proves of any service in that direction."

APPENDIX No. III.

MEMORANDUM of the SUGAR REFINERS at LIVERPOOL.

Under assimilated duties, there ought, for the maintenance of competition on equal terms, to be equal incidence of all burdens imposed by authority of the State.

If, for any invention, French producers of refined sugar should have only royalties of one per cent. *ad valorem*, while the British should have to pay royalties of five per cent.,* it is obvious the Patent Law may in effect impose on the latter a most onerous *differential duty*.

The law contains no provision for uniformity of charges, either between one licensee and another, or between the licensees in one country and those in another, nor any protection against the injury which the want of such provision necessarily inflicts.

Something has lately been said in favour of an international Patent system, such as would contain a correction of evils that are now inflicted by the existence of separate systems for each country. On

* And charges as heavy; differences as extraordinary are quite compatible with, and there is reason to fear quite common under the actual law.

the part of the sugar trade it is now submitted that the conference at Paris, for a common understanding as to sugar duties, may well embrace a common arrangement as to future *Patents affecting sugar*.

Such an arrangement, it is obvious from what has already been stated, is *requisite* to put the countries that will be combined in the arrangement of duties on a fair footing in their mutual *trade in sugar*, and it can easily be effected. All that is wanted is the introduction into all sugar Patents of the following conditions and promises or such like:—

The Patent shall confer Patent privileges in each of the united countries.

Any person desiring to use the patented invention may do so upon undertaking to pay such royalty as a mutually appointed referee may affix, having regard to what other licensees are paying.

At the end of three years the Patent shall be valued by competent experts.

As soon as the royalties paid by the several licensees shall amount to the valuation so made the Patent rights shall lapse, and the public may use the invention free (of charge). Thus, if the valuation were

1,000*l.* or 10,000*l.*, receipts for royalties to this amount would, on being submitted to the proper tribunal, or *books*, which the Patentee should be bound to keep and produce to the tribunal, entitle persons interested to demand that the Patents shall be declared no longer in force.

The above system would secure, on the one hand, an equitable recompence to the inventor, and on the other, would free manufacturers from prohibition to use an invention, of which their rivals in other countries, or even in their own, may be gaining the benefit (possibly free of charge), and from the danger of being subjected to unreasonable and insupportable charges for use.

If we were not so familiar with the monopoly which constitutes the reward of inventors, and the punish-

ment of others under the present system,* we would be surprised that it could have been tolerated so long.

If called on at this day to devise a system, and that system were not to involve remuneration from the exchequer of the nation, we would naturally think of some such project as the above, which certainly is both a fair and practicable one, and one amply liberal.

A strong inducement to adopt the project is its introducing, exhibiting, and testing that great desideratum, internationalism in the treatment of inventions.

* "System," it hardly is, for system implies wisdom more than it exhibits.

APPENDIX No. IV.

MEMORIALS to the COMMISSIONERS.

(1.)—MEMORIAL of the BRISTOL CHAMBER OF COMMERCE.

To Her Majesty's Commissioners for the Consideration of the Laws relating to Patents.

The Memorial of the Bristol Chamber of Commerce.

SHOWETH,

THAT your memorialists have had brought under their notice cases in which manufacturers have suffered great injustice in the shape of protracted litigation and heavy expense, without wilful default of their own, for alleged infringements of Patents, the greater portion of the parties proceeded against being merely users of machines.

Your memorialists refer to cases which have recently been under consideration in the Courts of Law, and especially to that of "*Foxwell v. Bostock*," some particulars relating to which are appended to this memorial.

Your memorialists respectfully suggest that the proper remedy for such grievances would be such an alteration in the law as should debar a patentee from taking proceedings for any infringement of his Patent until he shall have obtained the certificate of an officer appointed for the purpose specifying his Patent; and in any case of litigation the patentee should be required to establish his right in point of law, in the manner indicated by the Lord Chancellor in the case of "*Foxwell v. Bostock*," before proceeding for damages on the facts.

Your memorialists would further respectfully submit that the present state of the law imposes great hardships on the mere users of machines, who in most cases are entirely ignorant of the rights of patentees; and your memorialists therefore would respectfully suggest that the patentee should be debarred from bringing any action against a *user* of a machine, but that the user should be compelled to give information as to where the machines are obtained, under penalties, as provided in the "Trades Marks Protection Act, 1862."

And your memorialists consider also that proper provision should be made for giving publicity to Patents.

Signed on behalf of the Bristol Chamber of Commerce.

52, Queen Square, Bristol,
2nd June 1864.

GEO. WILLS,
Chairman.

The Case of Foxwell v. Bostock.

Recently tried before the Lord Chancellor, is thus described in a pamphlet published by Mr. A. V. Newton (page 26):—

"It was a trial preliminary to a long course of threatened litigation, to test the validity of Mr. Jenkins' sewing machine Patent, dated 16th October 1852. The Patent had become vested in Mr. Daniel Foxwell, who after a course of three trials at law instituted against a well known sewing machine manufacturer for compensation for an alleged infringement of this Patent, succeeded in driving him into a compromise whereby the sum of 4,250*l.* was paid in liquidation of all demands, and including a free licence to work the Patent for the remainder of the term. Encouraged by this success, Mr. Foxwell, through his solicitor, apprized the trade of his intention to levy royalties on the users of all needle and shuttle machines other than those manufactured by his licence; and failing to bring all those advertised to his terms (*viz.*, a payment of 5*l.* on every machine used before the 20th of June 1863, and 2*l.* on every machine subsequently brought into use), he filed bills in Chancery against 134 alleged infringers. Application was made on behalf of 77 defendants to Vice-Chancellor Kindersley in November last for an order to compel the plaintiff to select one suit and carry it to a hearing, so as to determine the validity of the Patent before calling on the remainder of the defendants to put in answers to the several bills. The Vice-Chancellor, not being able to see how the putting in of an answer could affect or prejudice any one defendant, refused the application; whereupon the application was renewed before the Lord Chancellor. His Lordship, perceiving the importance of consolidating the suits, made an order to that end, directing that the machines complained of as infringements should be arranged in classes, so that one trial might dispose of a group of cases. This having been done, his Lordship ultimately determined first to try the validity of the Patent irrespective of the questions of infringement which might follow.

"The proceeding, being a novel one, was from this and other causes both slowly and irregularly conducted, the course of the evidence being twice interrupted to allow counsel to argue points which pressed upon the mind of the Court. Yet, notwithstanding the time thus consumed, a judgment was obtained which must be final, unless carried to the last Court of Appeal, the House of Lords, establishing at less expense than would have been incurred by a trial

law of the same duration the defendant's case, viz., that the Patent was void at law by reason of the insufficiency of the Specification. Had the matter not been thus summarily dealt with actions for infringement might have been instituted, and verdicts obtained by the plaintiff, only to be set aside by the full Court or

the Court of Appeal, finding, after listening for days to the subtle arguments of counsel, what the Lord Chancellor in the first stage of the litigation arrived at,—that the Patent was void, and the claim of the patentee against the defendants perfectly untenable."

(2.)—MEMORIAL of the CITY of GLASGOW CHAMBER OF COMMERCE AND MANUFACTURES.

To Her Majesty's Commissioners for the Consideration of the Laws relating to Patents.

The Memorial of the Chamber of Commerce and Manufactures in the City of Glasgow, incorporated by Royal Charter,
SHOWETH,

THAT your memorialists have had brought under their notice cases in which manufacturers have suffered great injustice in the shape of protracted litigation and heavy expense, without wilful default of their own, for alleged infringements of Patents, the greater portion of the parties proceeded against being merely users of machines.

Your memorialists refer to cases which have recently been under consideration in the Courts of Law, and especially to that of "*Foxwell v. Bostock*."

Your memorialists respectfully suggest that the proper remedy for such grievances would be such an alteration in the law as should debar a patentee from taking proceedings for any infringement of his Patent until he shall have obtained the certificate of an officer appointed for the purpose, specifying his Patent; and in any case of litigation the patentee should be

required to establish his right in point of law, in the manner indicated by the Lord Chancellor in the case of "*Foxwell v. Bostock*," before proceeding for damages on the facts.

Your memorialists would further respectfully submit that the present state of the law imposes great hardships on the mere users of machines, who in most cases are entirely ignorant of the rights of patentees; and your memorialists therefore would respectfully suggest that the patentee should be debarred from bringing any action against a user of a machine, but that the user should be compelled to give information as to where the machines are obtained, under penalties, as provided in the "*Trades Marks Protection Act, 1862*."

Signed on behalf of the Chamber of
Commerce and Manufactures in the
City of Glasgow.

JNO. McEWEN,
Vice-President.

J. S. FLEMING,
Secretary.

Glasgow,
16th June 1864.

APPENDIX No. V.

OBSERVATIONS on the CONSTITUTION of the COURT for the TRIAL of PATENT CASES, addressed to the COMMISSIONERS by the Right Honourable Sir WILLIAM ERLE.

In order that trials relating to Patents may be made more convenient and effective, it is suggested, for the consideration of the Commission, that in all suits wherein the validity or the infringement of a Patent shall be in issue, the decision of such issue shall be made matter of judicial cognizance, to be decided by the Judge, and that such Judge shall be empowered to decide each disputed question of fact, either alone, or with assessors' advice, or by the aid of a jury, as he shall think fit, and that subject to this alteration the jurisdiction of the existing tribunals shall continue.

This change would in many suits make only a small addition to the duty which the Judge, as the law now stands, ought to perform; for the construction of written instruments is for the Judge, when the surrounding facts bearing on that construction have been either admitted or found by the jury, and the Specification of a Patent is a written instrument within this rule.

In construing the Specification the Judge ought to know what, in the language of the statute, is "the new mode of manufacture," for which the Patent was granted, that is, *what is the subject of the Patent*.

In acquiring this knowledge he must acquire nearly all the knowledge that is needed for deciding the issues on the utility, the novelty, and the infringement.

The subject of a Patent is a very complex idea, not easily defined, but it may be described as follows:—It is an Invention of means for the attainment of some useful end. Invention expresses that an advance has been made beyond the boundary of knowledge as it existed before the Patent was granted; and the Inventions for which Patents have been granted seem to consist either of *mechanical means for applying force to matter, or of chemical means for compounding and resolving substances, or of a combination of such mechanical and chemical means so applied so as to attain an useful end*.

For example, Lister patented mechanical means for the end of separating sliver from noil.

Heath patented chemical means for the end of fusing manganese in a crucible.

Forsyth patented mechanical and chemical means for the end of firing guns.

In disposing of the questions concerning Patents, the relation of the means to the end, or, as it is sometimes called, of the process to the purpose, should be constantly borne in mind as the most important element in the subject of a Patent.

Invention in most cases begins with the idea of the advantage, which is the end to be attained, and it is finished with the Specification of the means for attaining that end. In deciding whether the Invention is new or has been infringed, the inquiry is whether the same end which is attained by the means comprised in the Patent has been attained by other persons by the same or like means, that is, by mechanical or chemical equivalents.

Upon this inquiry the sameness of the end can be more clearly perceived than that degree of likeness in the means which amounts practically to identity, and on every trial the main contention lies in settling whether the means for attaining the same end, in appearance different, are in substance the same.

Lister's Patent may be referred to as an example. His means were an oscillating arm carrying a comb taking up and laying down a tuft of wool; his end was separation of sliver from noil.

Want of novelty was objected, by reason that the motion of the comb on the oscillating arm taking up a tuft of wool attained the same end which Heilman had attained by nippers, and although the comb was very unlike the nippers to the eye, yet when they were considered in relation to the end attained thereby, they were thought to be equivalent means for the same end, and Lister made a Disclaimer.

Leather used a revolving drum with a moving comb to attain the same end as Lister attained by

a comb on an oscillating arm, and although the oscillating arm was very unlike the revolving drum to the eye, yet when they were considered in the relation of means to an end they were found to be equivalent means for the same end, and to be an infringement.

In construing a Specification a Judge has to say what is the alleged discovery of means for an end which it contains. To do this he ought (as above mentioned) to understand what was the state of knowledge before the alleged discovery was thus used, then what is the end attained by the specified means. When this has been done, and the Judge sees clearly what is the subject of the Patent, it follows that he has approached to the knowledge required for deciding on novelty and infringement; but if each of these issues is for the jury, they have to learn from the Judge what is his idea of the plaintiff's Patent, and compare with that the idea they form of the evidence of prior use and infringement.

The issue of utility is scarcely worth mention, as it is not often the subject of contest, but if that question is raised it is also in effect answered as soon as the subject of the plaintiff's Patent is understood.

As to the application of the proposed alteration of the law to practical use: Upon the trial of either of these issues [by the Judge, if the question arises in the class of mechanical Patents, a model or diagram, when understood, would dispose of questions of infringement and of prior use, and provision might be made for ascertaining and furnishing to the Judge correct models or diagrams, and explaining their mechanical effect with the aid of an expert.

If the question arises on the class of chemical Patents, provision might be made in an analogous way for ascertaining and explaining the chemical process, and so likewise where the subject of the Patent combines both chemical and mechanical processes.

If these issues were all for the Judge each might be tried separately, and the evidence might be confined to the point, and the intentional confusion, which is a frequent resource for the party in the wrong, might be excluded, and failure by reason of the disagreement of the jurymen avoided.

Notwithstanding a well-founded belief that juries decide questions of fact better than any substitute that has ever been proposed, still the complexity of the issue, and the intricacy in which the respective duties of Judge and jury are blended together in suits on Patents, make these issues an exception to the general rule, and raise a presumption that the suggested alteration would be an improvement.

Subject to this proposed alteration, the legal tribunals at present established may rightly be thought to have the best qualities which experience can offer for administering the law. A tribunal is good in proportion as it is adapted to secure correctness in deciding questions both of fact and law, notwithstanding any miscarriage on the part of the men constituting the Court which tries any case, whether Judges or jurymen.

The inference of fact from the evidence adduced is before these Courts to be made by the jury with a direction on the law from the Judge. This inference of fact is subject to review by motion for a new trial before a full court, upon which motion the Judge who tried the case is either present or can be consulted.

The rule of law laid down by the Judge to the jury as the rule to which their inference of fact is to be applied is subject to review before the same Court, and afterwards before the two Courts of Appeal. These are the securities by which this institution is adapted to effect the desired object, without being dependent on the personal qualities of the men who happen to have a part to discharge in that decision.

Before changing this institution, and severing the administration of the law relating to property in Patents from the rest of the law, and consigning it to a single Judge, there are some objections to that course which may be worth consideration.

1st. The law of property is in some sense an organic whole, and one litigation may require a comprehensive knowledge of the whole law. For instance, if the assignees of a bankrupt patentee sue the executors of a deceased licensee for nonpayment of the royalty due according to contract for the licence, the defence may require a decision upon the part of the law which relates to bankruptcy, and on the part which relates to the administration of assets, and on the part which relates to the avoidance of contracts for fraud or want of consideration, as well as a trial whether the Patent in question was void. The legislature creating such a new tribunal, as has been suggested, must either give jurisdiction over all parts of the law arising incidentally in a suit in which the validity of a Patent is disputed, or provide for the ordinary tribunals remitting to the new Court any question relating to the Patent to be separately disposed of, and for proceeding with the rest of the suit after receiving back an answer to that question, and each alternative is inconvenient.

2ndly. Where a single Judge decides both fact and law it is difficult to create an effectual appeal. If an appeal is attempted on matter of law, every proposition of law, when applied, assumes a state of facts to which it is applied, and every application of a proposition of law by a Judge who decides on fact assumes that he finds the facts to exist to which the proposition of law correctly applies; under these circumstances it is not easy to find a ground of appeal. Further, if the Court of Appeal has to review the decision of fact, a written statement of oral evidence, without conference with the Judge who tried the case, gives very defective means for estimating what is the proper inference from the facts adduced. Further, if the same Court of Appeal has to decide what facts ought to be inferred from the facts deposed to, and at the same time what is the law applicable to the facts so inferred, if it differs from the Court below on the inference of fact, it is a Court of the first instance for the law which it applies to that inference, and the appeal in law would be taken away. Furthermore, the severed department of law would be subject, during a judicial life, to the control of one mind sitting alone without the advantage of healthful collision with other minds equal in judicial degree, and there would be no rotation of Judges enabling the suitors to exercise some degree of choice.

3rdly. Although there may be now a delay of other causes by protracted trials of Patent cases, still the remedy, by eliminating for future times cases involving questions of science from the jurisdiction of the Superior Courts, would introduce a great evil; the Judges of the Superior Courts have to decide on every interest depending on rights either to property or to personal security, and are presumed to be competent to perform every part of this duty. An alteration of an ancient institution, sanctioned by experience, on account of any peculiarities in respect either of the quantity or the subjects of litigation prevalent at a particular period, would be to sacrifice the permanent to the ephemeral.

The Courts at present established are probably sufficient for all real litigation; their time is sometimes consumed by actions which either ought not to be brought, or to be brought elsewhere; this might be checked. It may be that other relief is required to dispose of the increase of litigation; but the objections to an appropriation of one branch of the law to an isolated Judge for life appear to be grave, and these are some reasons for that opinion.

W. ERLE.

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